

BOARD of APPEALS
Public Hearing
December 11, 2014
7:30 p.m., The Annex

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 December 11, 2014 Town of North Salem Zoning Board of Appeals meeting to order.

The next meeting date was set for January 8, 2015.

The minutes of the November 13, 2014 meeting were unanimously approved.

HEARING HELD OVER:

BA14-34 Marian Zakerin (6 Lakeside Drive) – For demolition of a non-conforming single-family dwelling and construction of a new 2-story residence in an R-1 zoning district, per Article V Section 250-15 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-1/2 bulk requirements). The following variances are requested:

- Decrease the minimum combined side yard setback from 40 ft. required to 32 ft. proposed.
- Decrease the minimum rear yard setback from 35 ft. required to 16 ft. proposed.
- Increase the maximum building coverage from 10% permitted to 15% proposed.
- Increase the maximum development coverage from 25% permitted to 42% proposed.
- Increase the maximum F.A.R. from .20 permitted to .33 proposed.

The applicant was not available/asked to have her application held over to January.

PUBLIC HEARINGS:

BA14-36 Louis Giannini (320 Mills Road) – **Area Variance** – To decrease the minimum side yard setback in an R-4 zoning district, per Article V Section 250-15 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-2 bulk requirements). A setback variance of 13 ft. is requested (30 ft. required; 17 ft. proposed) for installation of a storage shed.

Louis Giannini stated that he wants to put a shed in at the end of his driveway near his garage.

Chairman Ivanhoe asked if the shed will be the same color as the one in a photo submitted with Mr. Giannini's application.

Mr. Giannini said it will either be painted to match his house (ivory) or like his other shed (barn red).

The Chairman asked if there are to be any lights on the shed, and Mr. Giannini replied that there will not be any lights.

Noting that the other Board members had no questions, the Chairman called on Amy Rosmarin of 322 Mills Road.

Ms. Rosmarin stated that she has an issue with the proposed shed, adding that it will be right next to her house. She handed out photos to the Board, explaining that one taken from Mills Road looking toward the Giannini property shows that there is a lot of space. Ms. Rosmarin said the proposed location of the shed will be too close to her outdoor seating area just on the other side of her 8-ft. fence. She commented that Mr. Giannini said she won't be able to see his shed, but she will see it/she can see the one all the way across his yard.

Chairman Ivanhoe asked how high the shed will be, and Mr. Giannini explained that it is a standard size/9.5 ft. tall.

Ms. Rosmarin said the shed will sit up higher where Mr. Giannini wants to put it, and it will tower over her 8 ft. fence.

The Chairman asked if the existing stand of trees between the 2 properties won't offer cover.

Ms. Rosmarin said they will not; she can see the Giannini house through the trees now, and they are dying.

Chairman Ivanhoe said he made a site visit, and it seemed to him that the shed would not be very visible. He thought maybe the Board should go back and include Ms. Rosmarin

Ms. Rosmarin remarked that there is a lot of room on Mr. Giannini's property/there are other places to put the shed.

Lisa Douglas said the shed would still be visible in other locations/the existing shed can be seen, but she was trying to understand Ms. Rosmarin's issue with the shed.

Ms. Rosmarin said it would just be very close/she wants breathing room and not to feel like she is living in Queens. She added that she can see the existing shed but at least it is pretty far away.

Ms. Douglas asked how big the shed is.

Mr. Giannini said it is 8 ft. x 10 ft.

Ms. Douglas asked how big the existing shed is, and Mr. Giannini said he did not know.

Ms. Douglas remarked that it is a large structure.

The Chairman asked Mr. Giannini, given that he has a nice large/flat piece of property, why he wants to have it by his garage.

Mr. Giannini explained that he wants to keep his snow blower in it, along with children's toys; because his property slopes downward toward the rear, it would be hard to access it in the snow whereas his driveway will be plowed.

The Chairman commented that if the shed were moved 13 ft. to the west, Mr. Giannini would not need a variance.

Mr. Giannini pointed out that the Board had seen photographs taken from his property and from Ms. Rosmarin's, and they clearly show all the trees and Ms. Rosmarin's fence, and he added that he thought she would rather not be able to see his house and other shed either. Mr. Giannini said he doesn't see what the issue is; he can see her house too/they are neighbors. He stated that the proposed location to one side of the driveway is the best one for him, not the middle of the driveway.

Chairman Ivanhoe asked if Mr. Giannini had built the retaining wall for the shed.

Mr. Giannini said he had not/it was built to level out the property.

The Chairman remarked that if the shed were moved over another 13 ft. it would not make much difference visually.

Ms. Rosmarin reiterated the need for breathing space.

Chairman Ivanhoe said the Board has to consider neighborhood impact, public health and safety and self-imposed hardship, but they are not charged with responsibility for protecting viewshed when there is otherwise no neighborhood impact. He said he would like to come to some sort of agreement that was acceptable to both parties.

Ms. Rosmarin suggested Mr. Giannini keep his things in his 3-car garage or his other shed.

Ms. Douglas said the Board could really not tell Mr. Giannini where to store his things.

Ms. Rosmarin referred to the Zoning Ordinance and said granting the variance would cause an adverse aesthetic effect on the neighborhood. She added that there are feasible alternatives/the variance is not the only way Mr. Giannini can have a shed. Ms. Rosmarin suggested Mr. Giannini put the shed closer to his own house.

The Chairman said the Board often requires applicants to put in screening.

Ms. Rosmarin commented that there is already screening, but she can see through it. She showed the Board a photo including her seating area, saying it is close to her fence.

Chairman Ivanhoe noted that Ms. Rosmarin's chairs face away from the Giannini property.

Ms. Rosmarin responded that people in a group turn and/or sit sideways at the end of a chair, and she asked why Mr. Giannini couldn't extend the paved area and put the shed closer to his patio.

Mr. Giannini stated that he is limited in what he can do because of the presence of wetlands/wetland buffer zones.

Ms. Rosmarin then suggested moving the shed more to the front/closer to Mills Road.

Gerald Reilly pointed out that another, different variance would be needed to put the shed in the front yard.

Ms. Douglas said it was not up to Ms. Rosmarin to propose locations for Mr. Giannini's shed, adding that views are not owned. She remarked that Ms. Rosmarin owns the 8 ft. fence that Mr. Giannini looks at.

Ms. Rosmarin suggested that a snow-blower does not require a building 10 ft. tall, so perhaps Mr. Giannini could find a shed that is 5 ft. high from which he could pull the snow-blower out the door.

Chairman Ivanhoe remarked that the proposed shed is an attractive building.

Ms. Rosmarin reiterated her preference for a low building, adding that Mr. Giannini could also put plants in around it.

The Chairman asked if Mr. Giannini would consider a smaller, lower building.

Mr. Giannini replied that he didn't know what design would satisfy Ms. Rosmarin, but the shed he wants is a standard size. He added that he didn't know of any shorter shed, and he plans to put a lot of things in the shed. Mr. Giannini thought there was plenty to limit Ms. Rosmarin's view of the shed but also admitted that if one is determined to study the landscape, one could certainly see it, especially in the winter.

The Chairman said that he did not like to hold over an application for something as simple as a shed, but maybe the Board would ask Mr. Giannini to put in some stakes to give a sense of the height of the shed and look at it again.

Ms. Rosmarin said she was agreeable to that and also said that in the meantime she would look for a shorter shed.

Chairman Ivanhoe suggested Mr. Giannini might put some additional plantings in. He noted that with the onset of winter, Mr. Giannini might have to keep his snow-blower in the garage for the time being.

Mr. Giannini said that was fine/the shed is not an emergency. He stated that he had not wanted Ms. Rosmarin's 8 ft. fence but felt it was her property/her business and so said nothing. Mr. Giannini remarked that Ms. Rosmarin's ability to see the top of his shed did not seem to him like reason enough not to be granted the variance, but he accepted the authority of the Board.

Chairman Ivanhoe said that if no compromise could be reached, it seemed the application would have to be carried over.

Mr. Giannini stated that he wants a standard-size shed that he can walk into; if the Board insists, he will look into getting a shorter shed.

Mr. Reilly noted that the variance is substantial and the need self-created; to justify granting the variance, the Board really should look at the site to consider what might be done.

The Chairman agreed, adding that observing stakes to get an idea of the shed's height might help.

Mr. Giannini pointed out that he had used cones to indicate the shed's location in the submitted photos.

The Chairman said he would try to get a 9-ft. stake to bring to get an idea of the height of the shed and look at it from Ms. Rosmarin's property.

Rick O'Leary asked about the other sheds on the property, pointing out that there appear to be 2 sheds on the site plan but only one in Ms. Rosmarin's photographs.

Mr. Giannini explained that he got a building permit and joined the 2 sheds together.

Mr. Reilly asked if the sheds had required a variance, and the Building Inspector said they had not.

Chairman Ivanhoe stated that the Board will arrange to make a site visit.

BA14-37 Rylan West Realty, Inc. (contract vendee, 621 Route 22 and 8 Maple Avenue) – Request for a change of use in a GB zoning district from a pre-existing, non-conforming use to one which is more similar to permitted uses, albeit also non-conforming, per Article XIV Section 250-80 (B).

Don Rossi, attorney for the applicant, addressed the Board, stating that the principals of Rylan West Realty, Karl Ryzerski, his son, Eric, and Eric's wife Evelyn were present, as was Shelly Kahan of Interstate Sales. Mr. Rossi added that Eric and Evelyn Ryzerski live in Croton Falls. He said his clients are in contract to purchase the subject property, and he displayed a survey. Mr. Rossi explained that the subject property, known to most as Lakeland Lumber, is situated adjacent to Metro North tracks and across the street from Lift Trucks Project in the General Business district which was zoned Industrial prior to the 1987 Zoning Ordinance. He stated that the lumber yard is not a permitted use and also never went through Planning Board site plan review, which is now required for all commercial uses. He said there is an area variance for one of the sheds on the subject property, a provision of which is that the site access from Maple Avenue may only be used by the Fire Department. Mr. Rossi stated that there are no plans to change this. Because his clients will now have to go to the Planning Board, they don't want to make specific commitments to the ZBA that the Planning Board might have different thoughts on. He remarked that his clients want to improve the property, and Eric Ryzerski has met with some of the neighbors.

Mr. Rossi said Rylan West is proposing a mixed use, with a permitted use (office, retail, art gallery, etc.) in the front third of the street-front building, although they have no specific tenant in mind yet. The property is virtually all paved and has some large lean-to-type sheds. Rylan West wants to remove the shed addition on the back of the building so it can be used for two tradesman offices from which they will be able to see out into the lot. Mr. Rossi explained that tradesman office is not a permitted use in the GB district, although the site was developed for trade-type uses in the past. He noted that plumbers, general contractors and types of businesses that utilize service or delivery vehicles and require storage fall under the Zoning Ordinance's tradesman office definition, and he thinks the subject property is suited to these uses. Mr. Rossi commented that, unlike other parcels in the Croton Falls hamlet, the subject property has always been used this way.

Mr. Rossi stated that he was asking the Board for a determination that the proposed mixed use is more conforming (and partly conforming) to the Code than the present use. He noted that it will be subject to site plan approval by the Planning Board, allow for investment in upgrades/improvements and not be detrimental to the neighborhood if approved. Mr. Rossi said he was not seeking a variance or a special permit. He had

thought Type II Action was the appropriate SEQR classification. He said most of the ZBA's reviews are of Type II Actions that do not involve other Boards' approval, so the ZBA may act on them. He added that the Board has also dealt with applications that require Planning Board approval as well. These applicants start out with the Planning Board; when it becomes apparent that variances will be needed, application is made to the Board of Appeals, after which the applicants return to the Planning Board and continued site plan review, and the Planning Board handles the SEQR review. Mr. Rossi acknowledged that his clients will require Planning Board site plan approval. He went on to say that the Code does not require a public hearing for this type of application, but he and his clients agreed to a hearing and sent Notices to neighboring property-owners. He stated that his clients are not before the Planning Board/they do not have a site plan application. Mr. Rossi stated that he was requesting a determination that the proposed uses may be permitted. If, as he thought, this is a Type II action, it is not subject to SEQR review. He explained that he and his clients feel it is a matter of replacement, rehabilitation or reconstruction of a structure or facility and the Board would be granting an interpretation. Having agreed to classify the request as Unlisted, the Board could make the determination that the proposal would not have an adverse impact on the environment. Mr. Rossi said the proposal stands alone; his clients were not committing to any other course of action at the time, but they need this determination from the Board so they can decide to buy the property; if the Board makes the determination, they could come back and say they want to use the whole property for offices or a retail use/neither they nor the Town would not be bound to a specific course of action.

Chairman Ivanhoe noted that the applicants are contract vendees of the subject property, and he asked if they will go to the Planning Board as contract vendees or as property-owners.

Mr. Rossi answered that his clients have the option of going to the Planning Board as contract vendees, but they will eventually have to close on the purchase. He said that in the meantime, someone could learn of the impending sale and approach his clients about occupying the space in a totally conforming way that would not require what they were asking the ZBA for now.

The Chairman asked if what Mr. Rossi was asking for was a determination that the proposed use of the subject property is less non-conforming than the existing use based on the fact that the existing use was not subject to site plan approval, while the proposed use will be.

Mr. Rossi said that was one aspect; if his clients close on the purchase, the lumber yard use which is pre-existing/non-conforming now, will no longer be permitted.

Chairman Ivanhoe asked if Mr. Rossi meant that by purchasing the property, the lumber yard use will be eliminated.

Mr. Rossi said that was correct primarily because the lumber yard use itself is not conforming. Additionally, he said there could be uses that are permitted in a zoning district

but did not obtain site-plan approval that become non-conforming if site plan approval becomes a requirement later on. To give an example of how the proposed use is less non-conforming than the existing use, Mr. Rossi said the lumber yard had 18-wheel trucks going in and out, whereas the tradesman offices would seldom if ever see that kind of activity.

The Chairman commented that a large retail outlet would get deliveries that could be brought by very large trucks.

Mr. Rossi agreed that that was possible, but he also noted that the retail outlet would be a permitted use. He said he thinks the proposal is a good one for the hamlet, enabled by a flexible Zoning Code provision that lets a property-owner not lose all the benefit of past investment in the property and allowing a transition in use.

Chairman Ivanhoe stated that Mr. Reilly had said the proposal is a SEQR action, and the Planning Board would be the lead agency.

Mr. Rossi conceded that the request is for an Unlisted Action requiring site plan approval. He also said he believes the ZBA determination would not constitute segmentation under SEQR and there would be no negative impact on the environment, because it is just a determination. He added that he knows SEQR does not permit segments, but the determination may stand alone/does not require a course of action. He said his clients can do nothing or change what it is they want to do, and he does not think SEQR is a problem.

Mr. Reilly said the application is unique, but the appropriate Code-section is intended for a specific use that the Board deems to be more similar in character with the uses permitted in the district; it is not transitional. He stated that Mr. Rossi is asking for hypothetical approval which is not authorized by the State or the Town. Mr. Reilly felt the proposal should all be part of one action, starting with the Planning Board and an application for a specific use; without specifics there is nothing to vote on. He said the requested determination is more onerous than a special permit (granted for uses permitted by right), and the Board cannot make a determination based on an ephemeral hypothetical description; Mr. Rossi was asking the Board to approve the Section of the Zoning Code. Mr. Reilly stated that what was described sounds perfect for the subject property but it needs to be specific, and he added that the Town could lose an Article 78 proceeding over improper SEQR handling.

The Chairman said he thought Mr. Rossi was asking to redevelop the subject property in order to have a conforming retail outlet in the front of the building and 2 tradesman offices in the rear.

Mr. Rossi explained that the tradesman offices are specific; use of the front will be a use permitted in the GB district.

Mr. Reilly stated that site plan approval is needed.

The Chairman and Mr. Rossi agreed.

Chairman Ivanhoe said that if the applicants go forward with the purchase and someone wants to have some business or use that is not conforming, the applicants would have to come back to the ZBA.

Mr. Rossi said that if it was thought to be less non-conforming than the lumber yard, they would come to the ZBA; if it was a conforming use, they would go directly to the Planning Board for site plan review.

The Chairman proposed to take public comments and then have a straw vote of the Board so the applicants will have a sense of the Board's opinion, and then the applicants could proceed to the Planning Board.

Mr. Rossi said more research re segmentation under SEQR might be appropriate, and he would correspond with Mr. Reilly's office on the subject.

Chairman Ivanhoe said all the Board members present met at the site, and he thinks they support the application.

Mr. O'Leary agreed, saying the problem is not the content of the application but the procedure.

Mr. Reilly said that was right and it is important that the procedure be correct.

The Chairman called on Tom Christopher, owner of Lift Trucks Project at 3 East Cross Street. Mr. Christopher said he is in favor of the proposal and Eric Ryzerski has spoken to the neighbors about it, answering their questions and asking for their opinions. Mr. Christopher stated that he would love to see an art gallery in the front space, and he felt the redevelopment of the property would help revive the hamlet. He said the proposal sounded specific to him for an art/antique store in front and the 2 trade businesses at the rear. He asked if the space could be rehabilitated first and then a tenant selected.

Chairman Ivanhoe remarked that the Board's opinion will not be needed for a permitted use, so he didn't think the use of the front of the building needed to be more specific.

Mr. Christopher said people had been concerned about the possible use of the Maple Avenue entrance, but it sounded like Mr. Ryzerski would not do that. Mr. Christopher said another issue was that people do not want to see a landscaping business with the attendant machinery and day laborers.

Mr. Rossi explained that the definition of tradesman offices states that it does not include material-processing or landscapers.

James DePaoli of 619 Route 22 asked what hours of business are to be permitted for the tradesman offices.

Mr. Rossi said business hours are one of many things scrutinized by the Planning Board as part of the site plan review.

Eric Ryzerski asked to speak to the neighbors himself. He said most contractors need to work 6 days a week, but maybe they could open later/close earlier on Saturdays. He felt pretty sure the lot would be quiet on Sundays.

Mr. DePaoli asked if people would be working with backhoes, etc.

Mr. Ryzerski replied that the property really is not large enough for that kind of tenant; landscapers and tree businesses would not be appropriate.

Mr. DePaoli said he looks forward to seeing the property cleaned up and admitted that he too had been worried about use of the Maple Avenue driveway.

Mr. Ryzerski said the Lakeland Lumber employees had used that driveway for parking, and it will be needed for parking in the future. He supposed the Planning Board could say they want the driveway used, but his plan is not to.

Alice Jackson-Jolley of 5 Maple Avenue said the neighboring area is unique in that Route 22 is a very busy street, yet Maple Avenue is residential. She said she has witnessed near-fatal accidents while waiting for the school bus with her children. Ms. Jackson-Jolley said she did not understand the zoning/planning process but wanted to know if there is any chance the Planning Board would want the Maple Avenue gate opened, adding that increased traffic on the small street would be a bad thing.

Chairman Ivanhoe said the Board of Appeals would say the gate may not be used, and he thought it unlikely that the Planning Board would want Maple Avenue used.

Mr. Reilly stated that if the ZBA makes it a condition that the Maple Avenue entrance not be used, the Planning Board may not override it.

Mr. Rossi said the existing area variance for one of the sheds already prohibits use of the Maple Avenue gate; the property-owner would need to return to the ZBA to get permission to use it. He also stated that he does not think the ZBA can impose conditions in this type of determination.

Mr. Reilly disagreed, saying any determination of the ZBA may include conditions reasonably related to the resolution of approval.

Mr. Rossi said it is a moot point, but he disagrees with Mr. Reilly. He went on to say that it is very desirable for a commercial site to have secondary access for emergency vehicles, but otherwise it is best not to impact traffic on a side street. He remarked that his clients would not want to lose the use of the large shed enabled by the area variance, so they would not be inclined to ask the ZBA for permission to use the Maple Avenue gate for regular access.

Jon Jacobsen of 4 Maple Avenue said he too would not want to see Maple Avenue used, adding that he was also concerned about hours of operation, lighting and materials stored on-site. He explained that he would not want to smell piles of mulch or have someone there cutting firewood at all times of the day and/or night. Mr. Jacobsen does not want a landscaping business.

Mr. DePaoli concurred about the lighting, asking if the Board could restrict it.

The Chairman said the Board usually gives consideration to lighting requests and dark skies compliance.

Mr. DePaoli said he asked because his children's bedrooms overlook the yard.

Mr. Ryzerski asked if the lumber yard had lights on in the yard at night.

Mr. DePaoli said he thought there was just one pole-mounted dome light that was not always on.

Chairman Ivanhoe said the Board would take lighting into consideration.

Mr. Ryzerski said he does not think much lighting will be necessary, and certainly not left on all night. He added that he would be willing to work with the neighbors to see if the lights might be turned away from the neighboring houses.

Mr. Jacobsen said he was also worried about light streaming into his children's rooms at night/he would ask that the lights not be aimed upward.

Mr. Ryzerski said he would be willing to aim the lights in the direction of the train tracks.

Cynthia Curtis, Planning Board Chairperson, explained to Mr. Jacobsen that the tradesman office definition specifically excludes landscaping businesses.

Mr. Rossi read the definition aloud, hoping to defray some concerns. He commented that the definition is quite specific about what is and is not permitted.

Chairman Ivanhoe said the definition does not go into specific types of equipment, but the Board would want to know what kinds of equipment a tenant might have.

Mr. Rossi noted that the tradesman office use includes specific conditions, including no on-site processing, construction or fabrication and no outdoor display of products. He added that lighting is a major concern of the Planning Board during site plan review, so the balance to be struck is one of security vs. neighborhood impact.

Mr. DePaoli expressed confidence in Mr. Ryzerski's willingness to consider the impact of any lighting installed, and he said people should be looking forward to seeing the property improved.

Chairman Ivanhoe agreed that the proposal sounds like an improvement over existing conditions. He noted there were no further questions or comments, and added that the public hearing would remain open/there would be no resolution yet.

Mr. O'Leary asked if the Board would be tabling the application so Mr. Reilly could review the SEQR procedure with Mr. Rossi.

Mr. Reilly said he is clear about the procedure; the application is a hybrid action, but it is more onerous than a special permit because it proposes uses that are not permitted as of right. Mr. Reilly noted that the law allows conditions in resolutions for special permits and area variances, and he believes this determination may also have conditions. He explained that a public hearing was necessary. Mr. Reilly remarked that just because this section of the Code is being implemented for the first time does not mean it should be treated as something hypothetical; the public hearing should be kept open while the applicants go to the Planning Board for SEQR determination, but first there must be a real use proposed so the ZBA can determine if it is more conforming/facts must be established. He suggested keeping the public hearing open and giving the applicants a sense of the Board.

The Chairman said the Board believes it is reviewing a proposal to redevelop the site with a permitted GB use at the front and 2 tradesman offices (less non-conforming than the lumber yard) at the rear.

Mr. Rossi said the use is not an issue; the only issue is who will be the tenant, as the Board has been told what the uses will be. He asked the Chairman to close the public hearing and table the matter/leave it on the agenda so he can look into the SEQR points and speak to Mr. Reilly. If Mr. Reilly feels the applicants must first get a SEQR Negative Declaration from the Planning Board before the ZBA takes it up, it won't matter that the public hearing was closed. If the applicants decide not to return to the ZBA, the application may be removed from the agenda.

Mr. Reilly stated that the public hearing should be left open in case the Planning Board has any input to be considered by the ZBA, and he did not see the benefit to Mr. Rossi's clients of closing the public hearing. Mr. Reilly remarked that the public hearings are never closed when matters are referred back to the Planning Board.

Mr. Rossi said there is a lot of interest in developing the property and a lot of money involved. He stated that he was not before the Board with a site plan or an area variance application; he was merely asking the Board to allow a specific use. Mr. Rossi stated that if the Chairman closes the public hearing and his clients then need to return with changes suggested/requested by the Planning Board, the ZBA may re-open the public hearing. He added that at present, his clients merely would like to have approval for 2 tradesman offices and 1 retail outlet on the property which will not change as a result of anything the Planning Board does. Mr. Rossi stated that the benefit of closing the public hearing is streamlining the process; members of the public have already been given an opportunity to

speak. He reiterated that there is no site plan being decided on at present/just the uses are being requested.

Ms. Douglas recalled that the Board was going to offer a straw vote to give Mr. Rossi an indication of how they would vote, so she could not understand why there was argument about closing or not closing the public hearing.

Mr. Rossi explained that his clients are contract vendees of the subject property and have certain time period in which to assess the situation and decide whether or not to go ahead and buy the property (a due diligence period). He stated that if the ZBA makes the determination sought, his clients are not obligated to buy the property right at that point but will feel pretty confident that any site plan issues can be worked out. If the ZBA does not approve the uses and they go to the Planning Board, the process could take 6 to 9 months; too long a period in limbo/they might decide not to buy the property. Mr. Rossi said he asked 2 weeks ago for any issues or comments from the Board, Mr. Thompson and Mr. Reilly regarding the application but heard nothing until this night what Mr. Reilly views differently than he does about a straightforward and flexible section of the Zoning Code. He stated that he researched SEQR before coming to the ZBA and told his clients that by utilizing Article 250-9, they could ask the ZBA to approve the uses they want to have on the subject property; a simple provision is now being thrown into a complicated process with claims of ephemeral uses.

Mr. Reilly said the Code states that a use must be determined to be less onerous than an existing use, which requires a finding of facts and a resolution.

Mr. Rossi remarked that his clients believe uses have been presented.

Mr. Reilly stated that there must be a SEQR determination before there can be a resolution.

Mr. Rossi agreed but added that the ZBA can issue a SEQRA neg dec based on the submitted short EAF, regardless of any other agency that may be involved later. Those other agencies will have the opportunity to comment during the Planning Board review of the site plan, but the ZBA can make the determination requested now.

Chairman Ivanhoe said he wanted to close the public hearing and take a straw vote so the applicants may move forward; if the Board feels later that there are significant changes to their findings, they can reopen the public hearing.

Mr. Reilly commented that he did not think any findings had been made.

Chairman Ivanhoe said the findings are that the applicant proposes a permitted use for the front of the building, physical changes to the rear of the building to accommodate 2 tradesman offices, and the existing area variance allows use of the sheds and prohibits the use of Maple Avenue for access. He asked the other Board members if that was not clear to them.

Mr. Murphy agreed with the Chairman.

Mr. O'Leary said the tradesman office-use is less non-conforming than the lumber yard.

The Chairman noted that the proposal will undergo site plan review by the Planning Board, whereas the lumber yard never had site plan review.

Mr. Reilly said the site plan review is required for the change of use, and he does not believe the ZBA can make a final the determination per this particular section of the Code before the site plan is reviewed by the Planning Board.

Chairman Ivanhoe agreed that there would not be a final determination, but he did want to close the public hearing which could be reopened if necessary.

To close the public hearing.

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

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

The meeting was adjourned at approximately 9:03 pm.

Respectfully submitted,



Janice Will, Recording Secretary