

**BOARD of APPEALS**  
**Public Hearing**  
**January 8, 2015**  
7:30 p.m., The Annex

**MEMBERS PRESENT:** Cynthia McKean  
Lisa Douglas  
James Murphy  
Richard O'Leary, Acting Chairman

**MEMBER ABSENT:** Brian Ivanhoe, Chairman

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

***Acting Chairman Richard O'Leary called the January 8, 2015 Town of North Salem Zoning Board of Appeals meeting to order.***

The minutes of the December 11, 2014 meeting were unanimously approved.

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

**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 be held over to February.*

Mr. O'Leary announced that the Board would be taking the remaining agenda items out of order.

## PUBLIC HEARINGS:

**BA15-01** Three Willows Farm (461 Grant Road) – **Area Variance** – To allow construction of a second single-family dwelling on a lot, per Article III Section 250-9 (C). The applicant wishes to occupy an existing residence while a new house is under construction, after which the existing house is to be demolished.

Jamie Kieper of Insite Engineering addressed the Board, explaining that her client could not be present at the meeting. She described the subject property as having a single-family residence and an equestrian facility. Ms. Kieper said her client wishes to have a new house built and demolish the existing house when construction is completed. She stated that the new residence will be set farther back from the road than the existing residence; an existing garage will be kept and the driveway lengthened; a new well and septic system are to be installed. She said her client needs an area variance to permit construction of a second house.

Bruce Thompson, Building Inspector explained to the Board that the request is not for 2 primary residences on the subject property in perpetuity/it is only for the period of construction, and he noted that there have been similar instances in the past. He said that granting the area variance will allow there to be 2 single-family residences on the property temporarily so the applicant may use the existing house while the new dwelling is under construction, after which the original house will be demolished.

Mr. O'Leary asked what the time frame for construction and demolition will be, and Ms. Kieper said she thinks the project will take about 2 years.

Mr. O'Leary asked if the Board should set a specific maximum length of time to be allowed.

Mr. Thompson thought not, saying the condition should be that a demolition permit be issued within a specific length of time after completion of the new residence.

Mr. O'Leary asked what if it takes 5 years to finish the new house.

Mr. Thompson said issuance of the CO would start the clock for issuance of the demolition permit.

Gerald Reilly said no one would want a situation wherein the applicant moves into the new house before it is complete/has a CO and then takes years to complete the job and get a CO. He thought Mr. O'Leary wanted a time limit for completion of the new house which if not satisfied would result in the applicant having to return to the Board.

Mr. Thompson said the Building Code already limits a building permit to one year with a one-year renewal, during which time the exterior of the building must be completed; a second renewal for a third year may be allowed. He thought if the Board wanted to include a condition in line with this time frame, that wouldn't be unreasonable.

Lisa Douglas said that if this has been done before, the Board would not be setting a precedent. She asked what limitations have been put on the time frame for completion of construction in the past.

Mr. Thompson said it was not done in the past, and a problem arose.

Mr. Reilly said the Board would not want there to be 2 houses on the lot for years.

Mr. O'Leary said he thought the building permit time-frame of 3 years should not be exceeded.

James Murphy said it sounded as though it cannot run longer than that.

Mr. Thompson said he would refer an applicant to the Board of Appeals if they were not finished after 3 years.

There were no questions or comments from members of the public, and Mr. O'Leary closed the public hearing.

Mr. Reilly read a draft resolution, including conditions that the applicant will have a maximum of 3 years in which to complete the new house and no more than 60 days after that to apply for a demolition permit for the original dwelling which should be accomplished within 6 months.

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

**Ms. McKean:** Aye  
**Mr. Murphy:** Aye  
**Ms. Douglas:** Aye  
**Mr. Murphy:** Aye

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

Cynthia McKean asked if the applicant will consider giving the Fire Department use of the original house for practice before it is demolished.

Ms. Kieper said she will mention this to her client.

**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 was present.

Mr. O'Leary said the application was held over in December so that Board members could make additional inspections.

Mr. Murphy stated that he made a site inspection and did not think Mr. Giannini's request was out of line/the shed will have no negative impact on anyone.

Ms. Douglas said she looked at the site from multiple viewpoints and was inclined to agree with Mr. Murphy.

Ms. McKean stated that she looked at the site too and thinks the shed will be sufficiently blocked from view that it will not have any impact on neighbors.

Mr. O'Leary said he had noticed a conduit in the vicinity of the site for the proposed shed, and he asked if its purpose is to provide electricity to the shed.

Mr. Giannini responded that the conduit Mr. O'Leary observed on his property is for irrigation.

Mr. O'Leary said he felt that, given that the shed will be within the setback and the next-door neighbor commented on it, lighting or other additional features might create more of an impact on neighbors so he thought there should be no power to the shed at all, especially as Mr. Giannini has said the shed is just to be used for storage.

Mr. Giannini said he will not put any lights on the shed.

Ms. Douglas asked if Mr. O'Leary wanted no lights on the shed or in the shed.

Mr. O'Leary replied that he meant both, but then he asked Mr. Giannini if there are any windows on the shed.

Mr. Giannini said there will be and he asked if in the future he wanted to put in a pull-chain type of light he would be in violation of the resolution condition.

Mr. Reilly said that if the Board decided on a condition that there be no lights at all, a pull-chain fixture would be a violation.

Mr. Thompson asked the Board to consider that Mr. Giannini might want to be able to re-charge something in the shed, adding that to say there may be no power at all was somewhat stark.

Mr. O'Leary asked if there are windows on the side of the shed that will be facing 2 Great Oaks Lane.

Mr. Giannini said the shed has not been configured yet, but he would be agreeable to having no lights on the exterior and no windows on that side of the shed.

Mr. Murphy said the neighbor's issue with the shed was that she might see the very peak of the roof, which will not emit light; if it has no windows on that side, it will have minimal impact.

Mr. Giannini pointed out that his shed will be behind trees and his neighbor's fence, but he does not want to create a beacon that would upset her.

There were no further questions, and Mr. O'Leary closed the public hearing.

Mr. Reilly read a draft resolution including findings that after multiple site visits (and although the variance is not insignificant) the Board believes the impact of the shed on neighbors will be negligible if it exists at all, and its location at the end of the driveway is consistent with the applicant's desire to store a snow-blower in it. A condition was that there may be no lights on the exterior of the shed.

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

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

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

**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, offered to display a site map of the subject property, but Mr. Reilly said it would not be necessary as the public hearing of the application was closed in December.

Mr. Reilly stated that he was in receipt of correspondence from Mr. Rossi, and he also conferred with Roland Baroni, Attorney for the Town, and he prepared a draft resolution which he would read for the Board's approval/disapproval.

Mr. O'Leary said it was an interpretation based on the December presentation and the Board's response to that presentation.

Mr. Reilly said it was his legal opinion that the application was beyond the jurisdiction of the Board as an interpretation, as they may only offer interpretations based on requests from the Building Inspector. As it is an interpretation and limited by information provided by the applicant, he would read the draft resolution based on what was considered at the December meeting and the opinion of the Town Attorney and other officials.

*In short, the draft resolution stated that:*

- 1. The application does not seek approval of a specific site plan, so it is actually requesting an interpretation of Section 250-80 (B) of the Zoning Ordinance.*
- 2. As presented, the application is a Type II Action per SEQRA.*

3. *The Board finds that the conceptual proposal for a conforming use and one that is not permitted in the GB district but more similar to permitted uses than the current use as a lumber yard would fit the intent of Section 250-80 (B).*
4. *If the applicant were to submit an actual proposal for approval of specific uses, the proposal would require:*
  - *SEQRA review*
  - *Site plan approval*
  - *Referral to the Board of Appeals*

Mr. Rossi asked to comment. He said his client will go to the Planning Board, but if his client applies to the Planning Board for the exact same uses as those described to the ZBA, he did not see why it would be necessary to return to the ZBA.

Mr. Reilly said Mr. Rossi's client must return to the ZBA with specific uses and a site plan so they may make a finding based on an actual proposed use.

Mr. Rossi stated that Mr. Reilly's reading of the draft resolution was the first he had heard of it.

Mr. Reilly said that is the usual procedure; resolutions are not offered in advance to applicants for their review.

Mr. Rossi said his client was being given a Type II Action designation but no approval for the uses proposed to the Board and required by Section 250-80 (B); instead they are being required to return to the Board.

Mr. Reilly said no actual plan has been proposed, and the application should have been rejected because it is hypothetical. He stated that if the Board were to approve the application for any Tradesman Office use because it is more similar to permitted uses in the GB district than the lumberyard, Mr. Rossi's client could bring in an HVAC contractor whose business is installing units on top of skyscraper office buildings which the Town Board and the Planning Board preclude by permitting the Tradesmen Offices only in the RO district. For this reason, Mr. Reilly and Mr. Baroni believe a site-specific application needs to be made after going before the Planning Board, and this draft resolution is all that can be afforded the applicant at present. He said that, basically, it states that the Board agrees that 250-80 (B) provides access to an easy alternative to a Use Variance, remarking that no other Town Code that he is aware of offers. The proper procedure would be to go to the Planning Board with a site plan/specific uses so both they and the ZBA may determine whether the proposed use should be approved or not. Mr. Reilly explained that he and Mr. Baroni agreed that the application is for a Type II Action because it is a request for an interpretation that the conceptual proposal is in keeping with the intent of 250-80 (B), but the draft resolution is not an approval of anything.

Mr. Rossi asked to say with respect that Mr. Reilly was drafting provisions into the Zoning Code that are not there; if he objects to the relief offered by the Code, he should bring it up to the Town Board and ask to have it changed/removed. Mr. Rossi agreed that without 250-80 (B), his client would have no alternative but to apply for a Use Variance. He said the ZBA is

charged with making a determination on a proposal before it, and the Ordinance provides for the requested relief.

Mr. Reilly disagreed, saying it does not provide for making findings based on a non-specific application.

Mr. Rossi said the Code states that the Board may determine that a proposed use is more similar to permitted uses in the district than the existing use.

Mr. Reilly asked what the proposed use is.

Mr. Rossi said a Tradesman Office use is proposed, which use is defined in the Code, including limits and prohibitions (*Mr. Rossi read the definition from the Zoning Ordinance*). He noted that his client will have to go to the Planning Board who will not permit use by a contractor with oversize equipment or anything else that does not fit the definition. Mr. Rossi stated that the Zoning Ordinance offers a transition from a non-conforming use to one determined by the ZBA to be more conforming; however, the Ordinance does not state that an applicant must submit plans for a specific use, site plan or landscaping plan, and the Town is protected because application must be made to the Planning Board for an as-of-right use and a Conditional Use Permit for the Tradesman Offices.

Mr. Rossi said that whether or not there is such a provision in any other Town code is irrelevant. Mr. Rossi stated that if the Board thinks 250-80 (B) is a bad provision in the Code, they should bring it up to the Town Board. He said it is a flexible and appropriate provision that offers a road map for transition from a non-conforming use to one that is more conforming. Mr. Rossi pointed out that the existing lumberyard never went through site plan approval. He said 250-80 (B) does not state that there must be a specific use or a site plan presented; if the Board feels the requested use is more similar to permitted uses, they may grant approval. Mr. Rossi said the proposal is not a ruse to avoid review; his client will go to the Planning Board, adding that the Tradesman Office use has special Conditional Use Permit conditions. Mr. Rossi reiterated his opinion that the ZBA has the authority to approve a more conforming use that will require site plan approval of the Planning Board. He said the draft resolution gives his client nothing if it requires a return to the ZBA after Planning Board review.

Mr. Reilly said the proposal will have site-specific uses and a map then.

Mr. Rossi countered that Mr. Reilly was giving the ZBA more authority than the Zoning Ordinance does. He said Tradesman Offices is a well-defined use in the Zoning Ordinance, and what's being requested is a limited task/the draft resolution as read is not necessary. Mr. Rossi commented that the subject property is in need of improvement; approving the application will promote that, which is the point of the provision in the Code. He stated that Mr. Reilly wants to send his client to the Planning Board and have him return to the ZBA for confirmation, which is not necessary and is outside the scope of the Board's job.

Mr. Murphy asked, purely for argument's sake, if a small HVAC operation could be considered a Tradesman Office.

Mr. Reilly replied that it can be. He stated that the Board should be making a decision based on a site-specific application as they always do. He said that if a Code question is brought to the Board for interpretation, it is because the Building inspector has made a determination that someone objects to. Mr. Reilly remarked that the idea proposed is wonderful; the Code allows for an exception to requesting a Use Variance, but it requires presentation of real facts for the Board to consider. He noted that this was the first of this kind of application brought to the Board, and he assumes that any similar applicant in the future will be informed that they must provide plans and they will be referred directly to the Planning Board. Mr. Reilly conceded that Mr. Rossi was correct in saying that the Board was offering nothing more than a statement that they like the idea brought to them. He reiterated that they have never seen a hypothetical application like this one, and he has not seen one in 25 years.

Ms. Douglas said it seemed to her that the point was that the applicant wishes to know, hypothetically, if he may use the spaces on the subject property for a conforming use in front and a Tradesman Office in the rear to help him decide whether or not to purchase the property.

Mr. Reilly said it is not the Board's problem/the applicant wants generic approval that a Tradesman Office is more consistent with the uses permitted in the district than the lumberyard. He stated that the answer is, "Show me/show the Board what these uses are", because Tradesman Offices are not a permitted use in the district. If the Board is shown a specific proposal they will listen to Mr. Rossi and examine pictures etc., and they may decide that it is more consistent with permitted uses than the lumberyard.

Mr. Thompson stated that the way the application has a chance of advancing is by making a presentation to the Planning Board of the uses proposed and having them fit the prerequisites already in the Code re Tradesman Offices. He said the Planning Board may not prohibit the proposed use, because the applicant has an opportunity to return to the ZBA. He said he thinks the applicant's fear is that the Planning Board will deny the application because Tradesman Office is not a permitted use in the district. Mr. Thompson commented that he had thought the applicant should first come to the ZBA, but it has been pointed out that a use must be accompanied by a site plan. By going to the Planning Board, the applicant will get a site plan which meets the parameters of the Tradesman use; then the Planning Board (who cannot approve a non-conforming use) will refer the applicant to the ZBA for approval. Mr. Thompson said in the future he would advise a similar applicant to go to the Planning Board first, but he does not think it has been a waste of time to speak to the ZBA first because the applicant has presented what is wanted/he does not want to see the applicant scared off from something that has a good chance of success. Site Plan approval is needed and the Planning Board may not deny the application based on the non-conformity of the Tradesman Office use/they will send the applicant to the ZBA for a decision re permission for the non-conforming use with specific information provided.

Mr. Reilly said the application should never have been allowed to progress to this point without recognition of the problem, but he thinks it has happened because it is the first of this type of application anyone has seen.

Mr. Rossi said he could go to the Planning Board and be told they cannot process the application.

Mr. Reilly stated that the Planning Board would not do that because the Ordinance permits such a change without application for a Use Variance; the Planning Board would refer the project to the ZBA for their determination that the specific plan and uses are more like permitted uses than the lumberyard. He added that he and Mr. Baroni only agreed that the application is a Type II Action because it is a request for an interpretation.

Mr. Rossi stated that Mr. Reilly was calling it a Type II Action but they are not taking any action, which Mr. Reilly said was correct.

Mr. Reilly said that in an instance of an Article 78, the Court would find that the ZBA has no jurisdiction to offer such an interpretation.

Mr. Rossi said the action is any use the Board finds to be more similar in character to the uses permitted in the district. He said the crux is if the Board is comfortable with the project proposed; there are limits on Tradesman Office uses and there are permit conditions (*Mr. Rossi read from the Conditional Use Standards section of the Ordinance*).

Mr. Murphy asked, if Mr. Rossi is correct, what the problem is with returning to the ZBA with the specifics.

Mr. Rossi said the problems are time and expense.

Mr. Murphy asked if the ZBA couldn't help a bit by holding the current application open so Mr. Rossi will not need to re-file a new application.

Mr. Reilly said the referral from the Planning Board usually comes in the middle of their review.

Mr. Rossi said the fact that the application is one the Board has never seen before should not be used against him.

Mr. Reilly said he and the Board should not have allowed it to get this far.

Mr. Rossi said the Board has not done anything wrong; he submitted an application and they are obligated to hear it/there is no problem with the process.

Mr. Reilly said there is a problem with the process.

Mr. Rossi said everyone he has spoken to agrees with him.

Mr. Reilly asked if Mr. Rossi thinks Mr. Baroni agrees with him.

Mr. Rossi said he has only spoken to Mr. Baroni and Mr. Reilly about whether the application is for a Type II or an Unlisted Action. He said there have been e-mails back and forth for 2 weeks about whether or not the Board of Appeals may act without the matter going to the Planning Board first; now Mr. Reilly wants Mr. Rossi to return to the ZBA after the Planning Board's review. Mr. Rossi stated that if the application is for a Type II Action, the Board may act; passing it off to the Planning Board is not an action, and Mr. Reilly's dislike of the way the

Code is written is not a reason for the ZBA not to act. Mr. Rossi said Codes are written in ways that can be taken advantage of/nothing untoward is being attempted; his client is the contract vendee of the subject property and would like to lessen the risk of purchasing it. Mr. Rossi stated that a literal reading of the Ordinance permits the Board to determine that the 2 proposed Tradesman Offices on part of the subject property are more similar to permitted uses in the district than the existing lumberyard; then he would go to the Planning Board for Conditional Use site plan approval. He said the fact that it is a new type of application does not preclude the Board from approving it, knowing the Planning Board review will be properly conducted. Tradesman Office use is straightforward as are the Conditional Use Standards. If the Board feels the application requires a site plan, they should speak to the Supervisor/Town Board about changing the Code.

Ms. Douglas asked if there was reason not to trust the Code.

Mr. Reilly reiterated that the Board cannot make a determination that the proposed use is more consistent with permitted uses than the lumberyard based on this application, because it is non-specific.

Mr. Murphy asked if the Tradesman Office use was limited by the Ordinance to painters for example, and the application included no information about what the painter looks like, could the Board approve the application.

Mr. Reilly explained that 250-80 (B) states that any non-conforming use may potentially be approved, but the request must be for a precise use in order for the Board to make a determination of fact, which is what they always do/it is what Zoning Boards do. To do what Mr. Rossi is asking would have to be a legislative function. Mr. Reilly said the application should not have been allowed to come before the Board as is.

Bruce Wenig, realtor for the current owner of the subject property, asked to address the Board. He said there have been contracts several times over 2 years that have not gone through, and he has met with Supervisor Lucas and the Town Attorney to try and to find out what the Town wants/will allow on the property. He explained that it is a difficult lot to use, with limited water/septic. Mr. Wenig said the current contract vendee is a local person who has spoken to the neighbors, and they approve of his proposal. He said there are no specific tenants yet, but the plan is to clean up the lot and get in tenants permitted by the Zoning Ordinance. He remarked that time is important because the contract vendee does not have to go through with purchase of the property.

Mr. Reilly stated that Mr. Wenig admitted the application is ephemeral, yet the Board deals with specifics. He said the applicant will eventually have to go through the review process, and a site plan will be necessary for Planning Board approval. Mr. Reilly said he disagrees with Mr. Rossi's interpretation of the Ordinance; Mr. Rossi wants ZBA approval and to be able to tell the Planning Board that the ZBA has approved the proposed use of the property by any Tradesman Offices and that his client need not return to the ZBA. The Board may not do what Mr. Rossi wants; all Board of Appeals determinations must be based on specifics whether that is stated in the Zoning Ordinance or not.

Mr. Wenig said the buyer wants to try to do what is in the application/get a type of tenant permitted by the Town; if the Board will just clarify what will be allowed, that is what he will do.

Mr. Reilly said they cannot do that without a full application.

Mr. Rossi agreed that the Board normally considers applications with site plans. He noted that a site plan would be necessary for an application for an Area Variance, and the Special Permit application also requires a Statement of Use. He stated that this application is different, and Mr. Reilly is reading requirements into the Code that are not there.

Mr. Reilly stated that the Ordinance does not state a requirement for a site plan with an Area Variance application.

Mr. Rossi said it is required by the application itself.

Mr. Reilly noted there is no specific application for 250-80 (B).

Mr. Rossi agreed, but he also reiterated that Mr. Reilly may not read requirements in 250-80 (B) that are not there.

Mr. O'Leary stated that the Board would probably not vote on the application yet but should take further consideration and counselling from Mr. Reilly. He said they could further discuss pros and cons or vote on the draft resolution as read, but if Mr. Rossi/his client want the resolution amended, the Board will need to take more time.

Mr. Rossi said he thought the Board could vote on the application, and he asked if they need a site plan and a specific user in order to do so. He also asked if they feel the proposed mixed use is better and more conforming than the lumberyard.

Mr. Reilly said the question is whether the Board can approve a generic application.

Mr. Rossi disagreed, saying the use proposed is specific/Tradesman Office is defined in the Zoning Ordinance. He added that the Board may not require a site plan because 250-80 (B) does not require it.

Ms. McKean said the Tradesman Office use is too broadly-defined without offering a specific user.

Mr. Rossi said he was asking to have a use approved which is a Conditional Use requiring Planning Board review, and he asked why he should have to return to the ZBA after that.

Ms. Douglas asked what difference it would make if the ZBA were to vote no on the application, and then Mr. Rossi takes it to the Planning Board.

Mr. Rossi said it would not make any difference; the ZBA has stated that the application is a Type II Action requiring no SEQRA review, it must then go to the Planning Board, and now the Board wants it brought back to the ZBA after that. He commented that the Planning

Board process will take time/cost thousands of dollars, and it is not reasonable to accept that the ZBA could deny the proposed use after that. He reiterated that the Planning Board will conduct the site plan review, and that 250-80 (B) states that the ZBA may approve a use.

Mr. Reilly said if the Board were to grant a generic Tradesman Office use, they would not know what it will be. He said Mr. Rossi was asking the Board to allow Mr. Rossi to tell the Planning Board that they (ZBA) have approved the Tradesman Office use for the subject property in a GB district and it is not necessary to return to the ZBA, after which Mr. Baroni would say Mr. Rossi was wrong about not needing to return to the ZBA and send him back.

Mr. Rossi said the Tradesman Office definition is specific.

The Building Inspector stated that if, as Mr. Rossi said, the Tradesman Office is a Conditional Use in the RO district, there are parameters/limitations. Mr. Thompson said that, similar to a Special Permit, the application may not be denied if the requirements are met, and he asked Mr. Rossi if that was correct.

Mr. Rossi said the Planning Board has some discretion, but he would argue that they must approve the application. He added that it would have to go through SEQRA review, which could be disapproved, but if the Conditional Use standards are met, the Planning Board must approve the application. Mr. Rossi stated that Conditional Uses are considered to be ones that require special conditions as opposed to as-of-right uses; the standards for Conditional Uses are 2 pages long in the Zoning Ordinance, adding to his argument that the Tradesman Office use is already specific.

Mr. Reilly said Tradesman Office is a Conditional Use in the RO district/not in the GB district.

Mr. Rossi agreed, saying it is the reason he is before the ZBA with it. He reiterated that it will still go through Planning Board site plan review and have to meet Conditional Use standards, and it is better for the property than the existing lumberyard use.

Mr. O'Leary asked if Mr. Rossi feels the draft resolution does not state that.

Mr. Rossi replied that it does not, because it states that it is a Type II Action because it is an interpretation, and he must return to the ZBA for a determination after the Planning Board's review.

Mr. Reilly said it reserves for the ZBA their proper function to make a fact-finding determination based on a fact-specific application, which Mr. Rossi does not have. He added that the Planning Board will refer the application back to the ZBA in mid-review, and there will be a site plan with a specific use. Mr. Reilly said there will be no time wasted by starting with the Planning Board, and the ZBA will be able to make a determination based upon a reality/specific non-conforming use. He noted that the Board is not restricted to Tradesman Offices by 250-80 (B), as it covers all non-conforming uses. When the application is referred to the ZBA, they will be able to determine that a specific use is more in keeping with the uses permitted in the GB district than the lumberyard, and the applicant will not lose any time.

Mr. Rossi said Mr. Reilly's view is naïve, and Tradesman Office is a specific, Conditional Use.

Mr. Reilly said it is only a Conditional Use in the RO district, not the GB district.

Mr. Wenig said the subject property has been on the market for 2 years.

Mr. Reilly said that does not matter in this instance.

Mr. Wenig said he has met with members of the Town Board, and the applicant's intention is as specific as it can be without a tenant. He stated that the potential buyer of the property is starting with the Board of Appeals to find out if what he wants to do is within the realm of what they will approve before moving on to the Planning Board. Mr. Wenig said the applicant is asking the ZBA to approve the Tradesman Office use for the subject property with the understanding that whatever tenant he gets must meet the requirements for that use.

Mr. Rossi agreed, saying the ZBA may say that the occupant must be in strict conformity with the use as defined in the Zoning Code and meet all Conditional Use requirements. He stated that all he was asking of the Board at present was if they will approve the Tradesman Office use/find that it is more similar to permitted uses than the existing non-conforming use, especially given that the front of the building will have a conforming use.

Ms. Douglas asked why the Board could not do this.

Mr. Reilly stated that it is because the application is not specific; Mr. Rossi is saying that anyone who complies with the Code may do whatever they want to. The ZBA does not impose Conditional Use requirements.

Mr. O'Leary asked how to advise the applicant on what he should do. If he brought a drawing that showed "retail" at the front and "plumber and electrician" at the rear and showed parking areas/indicated the number of vehicles, would that be sufficient.

Mr. Reilly said those are the things that should be on a site plan as part of a specific proposal that the Building Inspector or the Planning Board consultant could review. He said Mr. Rossi is asking the ZBA to tell his client that he may do what he wants if he complies with the Ordinance.

Mr. Rossi said that is what he wants; for the ZBA to say they approve the Tradesman Offices use in the GB district.

Mr. Reilly said there has been no finding of facts. He thought the request should be that specific Tradesman Office uses set forth in the application, which are non-conforming in the district, be determined to be more consistent with conforming uses. Mr. Reilly asked Mr. Rossi for an example of a case in support of what he wants.

Mr. Rossi said there are none because no one else has such a section in their Zoning Ordinance.

Mr. Reilly countered that there are cases stating that a determination by a board not made based on findings of fact is null and void.

Mr. Rossi stated that the Board may make a decision based on the facts presented.

Mr. O'Leary said any decision made at this meeting would be based on the draft resolution prepared/read by Mr. Reilly; they are not going to change the resolution or make a new one without consultation with counsel.

Mr. Rossi said the Board would be reaching beyond their authority to require the applicant to return after Planning Board review, because this requirement is not in the Ordinance. Additionally, he said the Code does state that they may determine that the Tradesman use would be permitted for the subject property/the Code provides this flexibility. He remarked that he thinks the request is specific, but if the ZBA is not comfortable with it, they may pass it on to the Planning Board. Mr. Rossi said it will impact his client if, after going through the expense of Planning Board review, the ZBA then decides they do not like something about the proposal.

Mr. Thompson asked to offer a suggestion because he hated to see an opportunity lost/denied. The suggestion was that the Board take an additional month to study the Conditional Use process and decide whether or not there is enough required by the Ordinance to make approval of the application reasonable or else require the applicant to return after Planning Board review. Mr. Thompson commented that if the Planning Board says they cannot review the application/make conditions because it is for a non-conforming use, it will slow the process. He asked the Board to take a month to study the details of Conditional Use Permits and Special Permits and the difference between the 2.

Mr. Rossi agreed that this would be useful but thought the Board could accomplish it in 10 minutes, saying they do not need to meet again in a month. He offered the Board a copy of the standards.

Mr. O'Leary stated that the Board members are volunteers/not experts and should take time to absorb, digest and act on something of such complexity.

Mr. Reilly reiterated that the Board needs specifics/an application with drawings. He said Mr. Rossi was asking the Board to say that if his client complies with the Ordinance the applicant may do what he wants to do, but they do not know what he wants. Mr. Reilly said the applicant will have to go through the process anyhow/he needs Planning Board SEQRA review/site plan approval, and during that review the Planning Board will refer him to the ZBA to determine if the proposal is more consistent with conforming GB uses than the existing use or not. He suggested that the applicant might propose all conforming as-of-right uses to the Planning Board and not need to return to the ZBA. He stated that there is no need to study the Conditional Use standards because in his opinion there is no application.

Mr. Rossi asked that his client not be made to go through the additional step of returning to the ZBA.

Mr. Wenig said the ZBA's approval of the use would not preclude the need to go to the Planning Board; it would just prevent the third step (returning to the ZBA) which might cause the buyer to pull out of the deal. He remarked that he (Mr. Wenig) has spoken to the Town Supervisor and met with Town Board members to try and figure out what kind of

buyer/business would be appropriate, and he believes the applicant is that person. Mr. Wenig said the applicant is a local person, and he just wants to know that the Tradesman Office use will be allowed for part of the subject property.

Mr. O'Leary stated that Planning Board review takes months, whereas Board of Appeals decisions usually only take 1 month. He noted that all the ZBA members have visited the site, and they have all given an opinion that what is being proposed, generally, is acceptable. He said there is a mechanical or technical problem being discussed by Mr. Reilly and Mr. Rossi, and the problem has not been resolved yet. The Board has said that they believe the proposed use is more similar to conforming GB uses than the lumberyard, so they are not hindering the process; the hindrance is procedural. Mr. O'Leary said the Board is not discouraging the application/there is no resistance to the proposed concept, but he does not think the Board can vote on anything at present but the draft resolution. He added that the attorneys need time to work on a solution/the Board members are not procedural experts.

Mr. Rossi disagreed, saying the Board members are both sophisticated and familiar with the Zoning Ordinance; if they want time to review the Code, they may take it. He reiterated that the Code does not state that a site plan is needed for the Board to approve a use, and he does not see what the risk to the Board is in not having one; they can trust the Planning Board to control what is permitted. Mr. Rossi stated that their need for details is keeping them from approving a worthwhile project.

Mr. O'Leary said time is needed to work out the details of a resolution with Mr. Reilly.

Mr. Rossi said he does not get draft resolutions in advance.

Mr. O'Leary pointed out that Mr. Rossi has one now.

Mr. Rossi said he feels the Board has enough information already and the Code does not require submission of more specific details. He told the Board that the Planning Board spent many months working up the definition of Tradesman Offices, and it is specific.

Mr. Reilly stated that the Planning Board and the Town Board specifically precluded the Tradesman Office use from the GB district, where it is non-conforming. He went on to say that the ZBA may recommend a specific use, and the Planning Board must approve it. He said Mr. Rossi's statement that 250-80 (B) does not require that a specific plan be provided is not meaningful, because none of the Board's applications state what specifics must be provided. Mr. Reilly stated that the applicant is proposing a change of use which requires a site plan and added that the applicant should have gone to the Planning Board first.

Mr. O'Leary asked Mr. Reilly what the applicant should do.

Mr. Reilly said the draft resolution states that the concept proposed is appropriate, but the applicant must return to the ZBA after Planning Board review; this should not have been necessary/he should have gone to the Planning Board first. Mr. Reilly said the Planning Board would require a specific plan; it would be noted that the proposed use is non-conforming, and the applicant would be directed to the Board of Appeals per 250-80 (B) for

approval, and no time would be lost. Mr. Reilly stated that zoning boards can only conduct fact-finding based on facts.

Ms. Douglas said she was becoming more confused; dealing with facts would imply specific tenants, i.e. a plumber and an electrician. She said she took this to mean that the occupants would always have to be a plumber and an electrician because the ZBA has deemed that these 2 uses only are permitted.

Mr. Reilly said that is correct, because the uses are non-conforming. When a use is changed, the proposed change must be approved by the Planning Board.

Ms. Douglas asked if when an applicant goes to the Planning Board, the application will be specific about what/who wants to be able to have their offices on the subject property.

Mr. Reilly said that is also correct, and in mid-review, the Planning Board will refer the applicant to the ZBA for approval of the specific non-conforming use, during which time the Planning Board will continue with their review, including number of occupant vehicles, etc.

Ms. Douglas asked what would happen if the owner got approval for an electrician but could not find one to use the space/could only find a painter.

Mr. Reilly said the application would have to state one or the other specific use.

Ms. Douglas asked how the applicant could know who will be in the space.

Mr. Rossi said that if the Board approves the Tradesman Office use, his client might not be able to get a tenant right away/he cannot even market the space until the use is approved.

Mr. Reilly said the applicant will not be able to market the space until he gets site plan approval. He noted that 250-80 (B) states that the Board may determine that any non-conforming use is more conforming to permitted uses/it does not hold the applicant to the Tradesman Office use. He asked what the benefit would be to Mr. Rossi's client if the Board voted to approve his application, given that he will have to go through site plan approval from the Planning Board any way.

Mr. Rossi said the Planning Board typically only refers applicants to the ZBA whose proposals require area variances; applicants strive for conformity but if a variance will be needed, it is known/understood. The referral comes near the adoption of the Negative Declaration under SEQRA which could be anywhere from 6 to 18 months into the process.

Mr. Reilly said referrals are usually made before SEQRA Neg Decs.

Mr. Rossi commented that if the Planning Board approves a plumber and an electrician after an entire process, he does not understand why Mr. Reilly would want them to return to the ZBA; the Planning Board will have covered all the details. In addition, if the plumber and electrician leave, his client will have to go back to the Planning Board if an HVAC contractor is interested in the office space; this is the reason he is asking that the Tradesman Office use

category be approved – all Tradesman Office uses will have been okayed by the ZBA and new/different tenants will only require Planning Review of the specifics.

Mr. Wenig said the applicant needs the ZBA approval to state that as long as what is submitted to the Planning Board is for a Tradesman use and is approved by them, it will be permitted.

Mr. Reilly asked why the ZBA is involved then.

Mr. Wenig said he believes it is to avoid the third step of coming to the ZBA after the Planning Board's review.

Mr. Reilly commented that the contract vendee would have faced an impossible pursuit without 250-80 (B), and he is fortunate that all he is being asked to do is return to the ZBA when he has specific uses. If the use changes, the applicant will have to go back to the Planning Board. Mr. Reilly said the statute benefits the applicant extraordinarily; the dilemma is the process. The applicant is asking for a determination that will come in the middle of the Planning Board review, and no time will be lost.

Mr. O'Leary stated that there was no agreement/the Board would not vote. He said nothing new was being added to the arguments and he would like to close the meeting. The attorneys should review the details and work out the procedure. Everyone on the Board has said they like the proposal.

***To adjourn the meeting at approximately 9:35 pm.***

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

***All in favor.***

Respectfully submitted,

  
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Janice Will, Recording Secretary