

Village of Walden  
Zoning Board Meeting  
October 02, 2014

Chair:	Brenda Adams	Present
Members:	Rebecca Pearson	Present
	Carolyn Wesenberg	Present
	Faith Piatt	Present
	Oscar Alleyne	Absent
	Gregory Raymondo	Present
Building Inspector:	Dean Stickle	Present
Village Attorney:	Robert Dickover	Present
Secretary:	Nancy LaMancuso	Present

Chairperson Adams - Called the Zoning Board meeting to order at 7:30pm with the Pledge of Allegiance. Member Alleyne is unable to attend tonight's meeting and Member Moore is sitting in for him.

**1. APPROVAL OF MINUTES:**

**2. BOARD BUSINESS**

**A. PUBLIC HEARINGS:**

**B. FORMAL APPLICATIONS:**

**B.1 74 Wait Street, Use & Area Variance**

Chairwoman Adams – In the formal application 74 Wait Street on September 4<sup>th</sup>, 2014 the Public Hearing was closed. Orange County returned their letters and said Local Determination; we will go forward with the environmental assessment board.

Attorney Dickover – With respect to the two applications the Board has a Use Variance for a second dwelling on the lot where one is permitted, as a Use Variance it meets the criteria for Type Two action being that its construction or expansion of a single family residence on an approved lot. Secondly the Area Variance seeking the driveway it is a Type Two action pursuant to section 12 and that involves the granting of an individual setback variance. The Board could nominate yourselves as Lead Agency and there upon type the action as Type Two action, both of them are and the would conclude the SEQRA review.

**Member Pearson made Motion to be Lead Agency and Type Two action  
Seconded by Member Wesenberg, All Ayes / Motion Carried**

Chairwoman Adams – As the Public Hearing is closed, we need to vote tonight on the request for a Use Variance and an Area Variance. Does anyone have any additional questions for the applicant? None noted. We can vote to approve or deny the Use Variance.

Attorney Dickover – Can we address the four factors on the Use Variance? Findings on each would be appropriate.

1. Whether or not reasonable return can be made on the premises and proof of that is by competent financial evidence. **Chairwoman Adams – We did not receive competent**

**financial evidence or proof that the zoning single family R-4 was adversely affected. The Board is in agreement.**

2. Whether or not the hardship is unique, does it apply to a substantial portion of the neighborhood? **Chairwoman Adams – The hardship is unique for the Mishk family at this time, however there are other families that do face this need and this could set precedence. The Board is in agreement.**
3. Whether or not the variance if grant would alter the character of the neighborhood? **Chairwoman Adams – There is no proof one way or the other. The Board is in agreement.**
4. Whether or not the hardship is self created. **Chairwoman Adams – What we have come to realize is that most things are considered self created even though they are circumstances beyond people's control. The Board is in agreement.**

Attorney Dickover – The Board at this time can make a determination on the Use Variance or we can address the five factors for the Area Variance.

Chairwoman Adams – Yes the Board can address the Area Variance for consideration.

Attorney Dickover – Reviewed the five considerations for the driveway Area Variance.

1. Whether or not the Variance if granted would create an undesirable change or detriment to nearby properties. **Chairwoman Adams – There has been no showing by the applicant either way. The Board is in agreement.**
2. Whether or not there is a need for the Variance and the benefits sought by the applicant can be achieved by some method feasible for applicant to pursue other than and Area Variance. **Chairwoman Adams – It could be achieved in a way by using one of the other driveways into the property that exists. The Board is in agreement.**
3. Whether or not the requested Area Variance is substantial. **Chairwoman Adams – Yes is would appear to be substantial because it is another driveway coming off of the street which would be about 100%. The Board is in agreement.**
4. Whether or not the proposed Area Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. **Chairwoman Adams – There is no proof one way or the other. The Board is in agreement.**
5. Whether or not the allege difficulty is self created which consideration shall be relevant to the Boards decision but necessarily preclude the granting of an Area Variance. **Chairwoman Adams – There is no proof one way or the other. The Board is in agreement.**

Attorney Dickover – Those are the criteria for the Boards determination based upon those the Board can now make a decision on each.

**Member Raymondo made Motion to approve the Echo Cottage  
Seconded by Member Pearson to open it up for discussion**

Member Raymondo – There is space to put it in, it is not a permanent it is temporary and the utilities will be attached to the applicants house. I believe upon the person moving or passing that the structure will be removed and go back to what it was an empty lot.

Chairwoman Adams – Except there is no such thing as a temporary variance. If it was approved this unit could stay on that property for ever. There would be no requirement for it to be removed.

Member Raymondo – In the approval there is no way the Board to say it is to be removed?

Attorney Dickover – There is no provision in the code for temporary variances of this nature. Use Variances run with the land they don't belong to the applicant, they belong to the land. So if the owner of the property was to subsequently sell the property this Use Variance would still be in place. Absent of a legislative change by the Village, they have the power and the authority to do that but they have not done so at this point. So in its absence there is no provision for this Board to create a temporary variance.

Member Raymondo – With the Village Board not taking any action then there is nothing the Zoning Board can do?

Member Pearson – Exactly right.

Member Raymondo – What you are telling the Board is that we can't do it.

Attorney Dickover – The Board has the authority to grant the variance and permit this. We would need to go back and amend the Boards findings because right now the Boards findings on this question lead to a contrary conclusion. If the Board decides that they want to grant the variance the Board has the power to do that but not a temporary variance. It would be a full Use Variance which runs with the land and continues on with the property.

Member Pearson – And the Board can't put conditions on it?

Attorney Dickover – No, the Board can put conditions on a Use Variance but you can't call it a temporary Variance.

Chairwoman Adams – Member Raymondo do you want to go forward with your motion or do you want to withdraw it?

Member Raymondo – I will withdraw it, at this point the Boards hands are tied.

Chairwoman Adams – I'm sorry the Board has to vote by the law and not with our heart.

**Chairwoman Adams made Motion to deny the Use Variance under the conditions that have been previously discussed. Seconded by Member Pearson, All Ayes / Motion Carried**

**Chairwoman Adams made Motion to deny the Area Variance also because it has no value without the other. Seconded by Member Moore, All Ayes / Motion Carried**

Chairwoman Adams – There is only on item I would like to add to the minutes. The Village Board on September 30, 2014 voted 4-3 to not pursue accessory apartments, so that issue is dead for this Board at this time. There is no further action that needs to be taken. Any other comments/questions from the Board? None noted.

**C. DISCUSSION ITEMS:**

**D. INFORMATION ITEMS:**

**E. CORRESPONDENCE:**

**3. COMMUNICATIONS:**

**4. EXECUTIVE SESSION:**

**With no other matters in front of the Zoning Board, Member Pearson made a Motion to adjourn, Seconded by Member Moore with all members voting yes.**

**MEETING ADJOURNED:                      8:00pm**

RESPECTFULLY SUBMITTED  
October 02, 2014  
Nancy LaMancuso  
Zoning Board Secretary