

Village of Walden
Zoning Board of Appeals Meeting
November 05, 2015

Chairwoman:	Rebecca Pearson	Present
Members:	Carolyn Wesenberg	Present
	Gregory Raymondo	Present
	Mary Ellen Matise	Present
	Faith Moore	Present
Building Inspector:	Dean Stickles	Present
Village Attorney:	Robert Dickover	Present
Secretary:	Nancy LaMancuso	Present

Chairwoman Pearson - Called the Zoning Board meeting to order at 7:30pm with the Pledge of Allegiance.

1. APPROVAL OF MINUTES:

Chairwoman Pearson – Approval of minutes for 08/06/15.

**Member Moore, made Motion to accept Zoning Board of Appeals Minutes of 08/06/15
Seconded by Member Wesenberg, with all members voting yes.**

2. BOARD BUSINESS

A. PUBLIC HEARINGS:

A.1 39 South Montgomery Street, 7:30pm

Chairwoman Pearson – The application needs to be signed and notarized.

Attorney Dickover – We can resolve that with a signature this evening, it was noticed for this evening?

Chairwoman Pearson – Yes, it was noticed.

Attorney Dickover – Take the applicants signature at this point and I will notarize it.

Chairwoman Pearson – Ok, Mr. Stroud please explain what you would like to do.

Tony Stroud, property owner – The residence was a 1 family when I bought it. At the time what was existing downstairs was pretty much a finished basement and I improved it by adding a little more to it. At the time I was living there my mother moved in and when I moved out to get a bigger place she moved with me. As of right now a good friend of mine stays there and I was hoping to change it from a single family to a 2 family. That's where I am at right now.

Chairwoman Pearson – Do you have your mailings?

Tony Stroud – Yes.

Members Wesenberg and Moore - Counted mailings; mailed 33, returned 27, not picked up 6.

Chairwoman Pearson – Any other questions/comments by the Board?

Member Matise – When did you move in and when did you move out?

Tony Stroud – I bought the house 14 years ago.

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Member Matisse – The deed says 1999?

Tony Stroud – Right. I moved out maybe 3 years ago.

Member Matisse – When your mother lived with you what was the physical setup of the house?

Tony Stroud – I had it redone over to make it more pleasant to her liking. The apartment that was there was there when I bought the place so it's my mother and I wanted to do everything pretty much new. A refrigerator was there.

Member Matisse – Ok, but I mean the layout of the house. What floor were you living on? Were you living on the first floor?

Tony Stroud – We were living on the first floor, me, my wife and children. My mother was living downstairs in the basement area where the dwelling is sticking out.

Member Matisse – Did she have a bedroom? What did she have when she lived there?

Tony Stroud – Yes, she had a bedroom, bathroom and her own kitchen area.

Chairwoman Pearson – So there is like a second apartment in the house from what we had read because there was an issue in the house and that's how we found out there was a second apartment.

Tony Stroud – Yes and it was already there when I bought it.

Member Matisse – That was there in 1999?

Tony Stroud – Yes.

Chairwoman Pearson – When you bought the house? But it was still listed as a single family home at that time?

Tony Stroud – Yes, correct.

Chairwoman Pearson – One of the issues is that first, apartments there's a law that's 900sf for an apartment in Village of Walden and with the square footage that you have in the home it doesn't allow for that to be 2 apartments in the house. The first floor is 918sf and a ½ level on top of that, so the square footage is really not allowing for the 2 apartments in the home.

Chairwoman Pearson – Any other questions/comments by the Board?

Member Moore - My question was, did you purchase it with 2 apartments and you did not. Unfortunately because of the square footage I don't think there is anything really we can do, without even getting into the Use Variance and the things you would have to prove for financial hardship.

Chairwoman Pearson – The Board has 4 criteria's that you have to meet for us to be able to grant that to you and part of the hardship that you're not creating or giving to us right now either, financial burden things like that.

Tony Stroud – I don't understand financial burden?

Chairwoman Pearson – You don't have a hardship if it's rented out and you have that now. What happened was that somebody found out there was a second apartment and it's not legal. So the legality of it is that we can't change that because there's not really a hardship. You bought the building you're not presenting us anything with any financials of your rent situation and how much money is being put out and how much you're bringing in; we have to have all that information to make any decisions number one. Number two we don't really need to get into that because the square footage isn't allowing for a second apartment in that building.

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Member Moore – Use Variance criteria would be that you could not realize a reasonable return provided the lack of return is substantial is demonstrated by competent financial evidence, two that the alleged hardship relating to the property in question is unique it does not apply to substantial portion of the district or neighborhood, three that the requested Use Variance is granted will not alter essential character of the neighborhood and that the alleged hardship is not self-created. Which unfortunately is where the Board has a hard time when people come before us with a Use Variance being able to prove that financial hardship and that it's not self-created, but I think the square footage is the number one issue prior to even getting into this criteria. So my other question is you have a good friend staying there now? So are the actually 2 separate families staying and renting there right now?

Tony Stroud – Yes.

Member Matise – Are they related to each other?

Tony Stroud – No, not that I know of personally.

Member Matise- That is a significant change because when your mother lived there she was related to you, and these parties are not.

Building Inspector Stickles- As long as there are no separations between floors.

Member Matise – But with to different families who are not related to each other then you were renting it out as though it was a 2 family house but it really isn't. What is the square footage of the basement is it full basement?

Tony Stroud – I don't know the square footage, it's the size of the upstairs.

Member Matise - But how much of it is being used for your utilities the furnace, hot water heater, etc. and how is it separated from the living space.

Tony Stroud – One area one room where the furnace etc. is in one location.

Member Matise- The first floor is 918sf, the utility room is going to take away from the square footage so automatically you're going to be under the 900sf downstairs in the basement area.

Tony Stroud – Even though they use the area as storage?

Member Matise – They shouldn't be not with a hot water heater there, they shouldn't be using it at all.

Chairwoman Pearson – I would like to open the Public Hearing.

**Member Wesenberg made motion to open the Public Hearing
Seconded by Member Raymondo, All Ayes, Motion Carried**

Chairwoman Pearson – Any other questions/comments from the public? None noted.

**Member Moore made motion to close the Public Hearing
Seconded by Member Wesenberg, All Ayes, Motion Carried**

Chairwoman Pearson – Any more discussions, questions/comments by the Board?

Attorney Dickover – The application is subject to SEQRA. Based on what the Board has heard so far this evening and the short form is an Unlisted Type Action. The Board does need to go through the SEQRA process; we have a Short Form EAF.

Attorney Dickover – Reviewed the Short Form EAF dated 08/11/15, we can amend this as we go and The Board can make its determination. (The Short Form EAF was reviewed by the Board and changed/corrected accordingly by The Board) Madam Chairman those being the answers of the Board, a member of the Board could based upon these answers determine that there will not be any significant environmental impact to the environment and therefore a Negative Declaration could issue.

**Member Wesenberg, made motion to declare Lead Agency
Seconded by Member Moore, All Ayes, Motion Carried**

**Member Wesenberg, made motion as stated above by Attorney Dickover
Seconded by Member Raymondo, All Ayes, Motion Carried**

Attorney Dickover – I believe this was referred to the Orange County Planning Dept. they sent back a letter stating it's one for Local Determination dated 08/31/2015, that recommendation comes with the reminder that the application is subjected to the unnecessary hardship standards being the 4 factors set forth in the State Law.

Chairwoman Pearson – I'm looking at this only because of the square footage and the law.

Member Wesenberg, made motion to deny the application because of the square footage Seconded by Member Moore, All Ayes, Motion Carried

Chairman Plato – I'm sorry the square footage does not allow us to even continue the conversation on the second apartment.

Tony Stroud – Ok, thank you for your time.

A.2 98 Gladstone Avenue, Continuation, 7:30pm

Chairwoman Pearson – The Board did a walkthrough of the property on 10/11/15. We had decided as a Board we would like to see what the property look liked, what was happening, what could happen in that area. It was a very educational walk through and we thank the real estate people for getting us in and it was noticed as a meeting so it was legal. We've carried over the Public Hearing to tonight; we did not close it so we will re-open it for this evening.

**Member Wesenberg, made motion to re-open the Public Hearing
Seconded by Member Raymondo, All Ayes, Motion Carried**

Chairwoman Pearson – The Board thanks everyone for coming back tonight as well.

Joe Coburn, Attorney from Pine Bush representing the Affirmative Evangelism Fellowship – I was not here at the initial application, I did have the opportunity to speak with the Boards counsel Attorney Dickover in connection with this matter. I understand that perhaps the Board would be happier if the application were amended in some fashion. My client does not yet own the property, it is still in the name of The Little Sisters of the Assumption and from my reading of the statue and the regulations I don't know if my client at this juncture would be the appropriate applicant. I think the applicant should be The Little Sisters for obvious reasons. What I would ask is that this matter be continued, to give us the opportunity to file an amended application. I would like know if after the Board went out to inspect the premises and do the walk through, not to ask you to tip your hand, as to what the Board would be inclined to do, we would strongly be happy to make that amended application. You might find intents in utilizing the premises for both a residential and educational purposes. In reviewing the initial application as made, I don't think that it was sufficiently stressed the educational intent this property is going to be utilized for. It's not going to be utilized solely for residential purposes or dormitory purposes but there will also be educational and classes being held at the site, just as it was with The Little Sisters. Obviously it is designed primarily for dormitory purposes but also contains any number of classrooms. Those classrooms will be utilized on a regular basis for the purposes of education in off hours when the children

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are not at school at Chapel Field Christian School on Flurry Road in Pine Bush. I don't think that was sufficiently set forth in the initial application and again that will be addressed in our amended application.

Member Matise – Are you proposing that the school is going to be the amended applicant or are you going to involve The Little Sisters?

Joe Coburn – I think the Little Sisters will be the applicant. Obviously the Little Sisters have a hardship in the fact that they have a property that is difficult to sell and market by reason of the limited uses that it can be put to. My client cannot be the applicant at this point because it would be a self-made hardship. If the Board is so inclined I would think that the applicants should be The Little Sisters, speaking with their counsel they are prepared to make that application.

Member Moore – If the amended application and the application comes in from The Little Sisters does it have to be a Use Variance application at that point, because it would just be the Board making an interpretation on the use, correct?

Attorney Dickover – It may be both. The current application before the Board really involves both of them, it's been characterized as a Use Variance application but in that process you may well be called upon to interpret the use that it is being put to and determine whether in fact it might be a school. That I suppose would be the same application The Little Sisters would put in front of the Board if the application be amended and/or simply assigned over to them and then they would become the applicant and bring the application on their own behalf.

Member Matise – Does that start the whole application process all over again?

Attorney Dickover – They could assign the application back over to The Little Sisters, they would step into the shoes of this current applicant so the process would not have to start over and just as you have in any other type of variance application they get modified as you hear the testimony and evidence produced in front of you pursuant to your response and the applicants response in turn may get modified and massaged as you will as they are in front of the Board just as you have the right to impose conditions upon these applications so as there are also changes. It is part of the natural processes in front of the Board to have this sort of thing going on.

Member Matise – So the community notification would be what has already gone out?

Attorney Dickover – Yes.

Chairwoman Pearson – The public here would be able to know when the next meeting is going to be as well.

Attorney Dickover – You would do as you did last month, is to continue the application. In the meantime it may get signed over to The Little Sisters and you would hear from them perhaps at the next meeting. I would perhaps suggest to Mr. Coburn if you're going to proceed in that manner perhaps a good way to address would be in a form of a narrative, to have the applicant describe in written fashion exactly what it is that they intent to do within the structure, as you mentioned educational activities, I think it is important to the Board to hear that. If they are going to be called upon to make an interpretation as to whether or not the proposed use is a school that's the place where perhaps it would be best put together with the testimony of the applicant themselves. The narrative is a little bit of a story about how the project would be used and for your purposes if it becomes an interpretation question the first threshold that you need to perhaps answer is, is it a school. If it is a school the code allows that as a permitted use subject to Special Exception Use Permit which then would go to the Planning Board. The Planning Board would review that under their criteria for Site Plan approval and would address issues such as you've hear about last month from the neighbors about traffic, parking issues, drainage and those kinds of things. They would be addressed by the Planning Board as part of what would become a Site Plan application for a Special Exception Use Permit. If that were the Boards finding a Use Variance would not be required, simply the Zoning Boards interpretation that's a school would be good enough and this applicant could then carry it to the Planning Board. If you determine that it is not a school then you would continue on and perhaps hear the application for the Use Variance at that point.

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Chairwoman Pearson – Any other questions/comments from the public at this time other than what we heard at the last meeting? I will say that when the Board did the site visit I thought it was very educational for me to go there. I had never been in there, the property is magnificent, it's a beautiful piece of property, and it is something I would not like to see houses on number one. I felt that there definitely classrooms there, there are definite things that they could utilize very well but it is our neighborhood as well and I do not want to negate anything the you the public would say. I thought it was very important for the Board to go there again I thank everyone for getting us there to see it.

Member Matise – When we did go for the site visit Bill Spanjer (Principle of Chapel Field Christian School) we discussed some of the issues that were brought up at the last Public Hearing. We talked about privacy screening, about the fill etc., so that is something that if it goes forward to the Planning Board those are definitely issue that they deal with.

Chairwoman Pearson – They are aware of the parking and busing and they were very right on key with everything that you had discussed. They are not trying to push anything on anybody, which if felt was very nice.

Member Wesenberg – I also took a tour of Chapel Field Christian School, they gave me a tour introduced me to students that would be living there. I highly encourage you call the school and take a tour. It made a difference for me seeing it, seeing the students etc., because I live here and had a lot of concerns too.

Chairwoman Pearson – Is there any comment from the Public?

Jim Corbett, 120 Walnut Street – So in either case, no matter how it's determined it has to go before the Planning Board?

Chairwoman Pearson – No, the variance is interpreted.

Jim Corbett – So if the interpretation is not for educational purposes then a variance is required?

Chairwoman Pearson – Correct.

Jim Corbett – If a variance is issued does it then goes before the Planning Board?

Attorney Dickover – No, this Board would have to sit and make the kind of determinations that the Planning Board would normally make on a Site Plan application. Just to be fair, it's difficult sometimes for Zoning Boards to do that because they don't do it all the time. If this board ends up going down that road there's going to be a lot more dialogue with the applicant and perhaps its experts and this Board to get through that process. But to answer your question if this Board determines that the proposes use is a school which is a permitted use in the zoning district the variance is no longer required because of a school being permitted, that is subject to Special Use Exception Permit from the Planning Board. So if the Board makes that determination the application then goes to the Planning Board. And to answer the other question, yes an application will be required to the Planning Board for the Special Exception Use Permit.

Member Raymondo – What is the determination/definition of a school?

Chairwoman Pearson – We don't have any definition in our code book at all about a school.

Attorney Dickover – I'll help you with that process when we get the application. The place to start would be to examine your code, see if there is a specific reference to it, I don't recall there being one. In the absence of that examine your code, the word is used in your code read those sections see what they are talking about and see if you can get a feel and definition out of that. You can also read Webster's dictionary and the common usage of the work in the English language is going to be your final analysis.

Annette Bower, Century 21 listing agent on the property – This is Sister Jean McCormick of The Little Sisters of the Assumption with me, she's not represented by an attorney right now. What would be the next step for her? Does she have to fill something out?

Attorney Dickover – I would expect you would you'll work that with the current applicants attorney.

Joe Coburn – I will speak with their attorney.

Attorney Dickover – The applicant and the perspective applicant they'll work those details out. I suspect it will come to the Board in a form of an assignment and with that you can precede on the application as they may amend it or not.

Chairwoman Pearson – Any other questions/comments from the public? None noted. We will hold open the Public Hearing.

Member Moore, made motion to keep the Public Hearing open to the next regular meeting on 12/03/15, Seconded by Member Wesenberg, All Ayes, Motion Carried

B. FORMAL APPLICATIONS:

B.1 39 South Montgomery Street, Use Variance

B.2 98 Gladstone Avenue, Continuation, Use Variance

C. DISCUSSION ITEMS:

Member Moore – Do we have a date for the next tri-board meeting?

Chairwoman Pearson – I will check on that. Does anyone have any informational items that they would like to share at the tri-board meeting? None noted. You can email if you do.

D. INFORMATION ITEMS:

E. CORRESPONDENCE:

3. COMMUNICATIONS:

4. EXECUTIVE SESSION:

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

MEETING ADJOURNED: 830 pm

RESPECTFULLY SUBMITTED
November 05, 2015
Nancy LaMancuso
Zoning Board Secretary