

Village of Walden
Zoning Board of Appeals Meeting
July 07, 2016

Chairwoman:	Rebecca Pearson	Present
Members:	Faith Moore	Present
	Carolyn Wesenberg	Absent
	Gregory Raymondo	Absent
	Mary Ellen Matise	Present
Alternate:	Dan Svarczkopf	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:

2. BOARD BUSINESS

A. PUBLIC HEARINGS:

A.1 108 Ulster Avenue, Continuation

A.2 106 First Street, Continuation

B. FORMAL APPLICATIONS:

B.1 108 Ulster Avenue, Interpretation

Chairwoman Pearson – I believe this has been taken off the agenda.

Attorney Dickover – I have received a letter from Counsel for the applicant Rebecca Valk. She made a presentation a month ago at the last meeting 06/09/2016. The letter indicates to me that they are withdrawing the application with the intention of asking for a further and or a different interpretation of your ordinance from the building inspector. I wrote back to her and told her that I would advise the board that they are withdrawing. The board at this point should consider the application as withdrawn. They withdraw without prejudice which means they can renew it if they chose to in the future. At this point I am expecting a request of the building inspector for some other interpretation and he will take that up in his normal course.

Chairwoman Pearson – Should the letter and response go into the file as part of the application so it is part of the record?

Attorney Dickover – Yes you can make both letters part of the record.

Member Moore – With the application being withdrawn do we close the Public Hearing?

Chairwoman Pearson – If they come back before the board they will have to have another notice of the meeting.

Attorney Dickover – Yes, new application new notice.

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B.2 106 First Street, Interpretation

Jay R. Myrow, Attorney representative – Michael Fuentes is the owner of the property is here also. There were a couple of questions at the last meeting on 06/09/16. One was Orange County violated for anything during their ownership of the property after the tax sale. I spoke with Building Inspector Stickles he said there was no record of violating Orange County for the property. Then there was a question regarding the water bill?

Chairwoman Pearson – I think the reason was because we wanted to see about 2 households possibly in the premises.

Jay R. Myrow – There is one water meter for the property. I don't know what the Village of Walden's policy is but typically my experience with other municipalities is that they give you one water meter and if you have multiple rentals they usually split the water bill or the landlord would cover the bill as part of the rent, which is what Mr. Fuentes is going to do.

Alt Member Svarczkopf - But the garbage is doubled correct?

Jay R. Myrow– Yes, garbage would be a double billing.

Chairwoman Pearson – I did a bit of research on the facts of the case in the very beginning on page 2 that you wrote to us, Orange County acquired the property in a tax foreclosure proceeding by deed dated 11/26/14. Prior to the purchase of the property Mr. Fuentes was unable to inspect the property or the premises. Is that true or not?

Jay R. Myrow– The interior.

Chairwoman Pearson – He was not inside the building?

Jay R. Myrow– Mr. Fuentes before you put your bid in were you allowed to inspect the inside of the property?

Mr. Fuentes – No, they do not allow you to inspect it.

Jay R. Myrow– It's like buying a car at auction.

Chairwoman Pearson – I called Orange County and was told today that they able to inspect the property. I was told this 2 times actually.

Mr. Fuentes – Not before the bidding, after the bidding when it accepted you can see the property and they will let you in. I was there with the Orange County representative. You couldn't see anything because there was so much furniture in it. I took out 7 truckloads of furniture.

Jay R. Myrow – I might has miss spoke there, obviously the intent was to say that he could not inspect the inside of the property before he actually place a bid.

Member Matise – The bid process it didn't sell during the February 2015 process which it then went on another list then Mr. Fuentes was able to bid on it and then go see it.

Chairwoman Pearson – It goes into a what they call a leftover sale and then it goes into a bid and it's approved by the legislature and he has to have the full house to accept it.

Member Matise – When did Mr. Fuentes take out insurance on the building?

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Mr. Fuentes – The insurance coverage comes from my primary residence, Allstate Insurance covers the building for liability.

Jay R. Myrow– So it was added to your home owner’s policy?

Mr. Fuentes – No, it’s part of my home owner’s policy on my primary residence.

Member Matise – How is that? It’s not your primary residence.

Mr. Fuentes – I have a letter from Allstate stating that. The policy covers my primary residence and any other investment properties for liability only.

Member Matise – Only if someone gets hurts on the property not to replace the structure.

Mr. Fuentes – Liability only.

Member Matise – How many other properties do you have?

Mr. Fuentes – I have 3-4 farms and building lots.

Chairwoman Pearson – You have a lot of copies of receipts that you look like you’re putting in this house. A lot of them are from Monroe, so you bring all your stuff up from Monroe and you’re building up here?

Jay R. Myrow- Mr. Fuentes does the majority of the work himself. I’m assuming he comes from home; he picks up stuff and drives up here.

Mr. Fuentes – Correct.

Jay R. Myrow – The majority of the work that he is doing and willing doing he does himself.

Alt Member Svarczkopf – We really never got an answer of when the property was vacated.

Member Matise – According to Orange County over the winter of 2014-2015. Mrs. Schoonmakers granddaughter was living there and she couldn’t afford the heat, so she vacated during the winter.

Alt Member Svarczkopf – And that’s when Orange County took over?

Chairwoman Pearson – Orange County took over October/November of 2014, that’s when they owned it.

Chairwoman Pearson – Are there any other questions/comments from the Board? None at this time.

Attorney Dickover – Chairwoman Pearson there are question I would like to ask the building inspector. Building Inspector Stickles how many years have you been a building inspector in the Village of Walden?

Building Inspector Stickles – 26 years.

Attorney Dickover – Do you have experience in inspecting both 1 and 2 family residences within the Village of Walden that were originally designed and constructed as 1 and 2 family residences.

Building Inspector Stickles – Yes.

Attorney Dickover – Does that experience include viewing the interior of 1 family and 2 families as well as the exteriors of those types of buildings?

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Building Inspector Stickles – Is this in respect to older buildings that were converted or new buildings that were built of. Yes you do the inside and the outside.

Attorney Dickover – Based upon that experience of viewing the interiors and exteriors of both 1 and 2 family buildings constructed in the Village of Walden do you have an opinion as to whether or not the building at 106 First Street was originally designed and constructed as either a 1 or 2 family residences?

Building Inspector Stickles – To answer the question honestly, I believe that this house originally was a 1 family home and somewhere through time has been changed to a 2 family.

Attorney Dickover – On what facts to you base that opinion?

Building Inspector Stickles – Because it is not built as other 2 family and 3 family homes in the Village of Walden were built, with fire walls and complete separations from one apartment to another.

Attorney Dickover – With respect to separations what kind of separations are you talking about?

Building Inspector Stickles – The old homes in the Village of Walden that were constructed in 1900, 1910, 1920 they were actually built as 2 separate units in one dwelling. They weren't one dwelling and then cut in half to create 2 apartments.

Attorney Dickover – Comparing those that were designed as 2 families to 106 First Street how is 106 different?

Building Inspector Stickles – I would say that somewhere through time the stairwell that led from the first floor area the tax records show to the second area was removed and the floor was covered over and thus created 2 different apartments. Probably the way it was constructed the entrance that comes off of First Street was always there and then just became the primary entrance to the lower floor.

Attorney Dickover – From the time of August 1, 2015 which I think our records of this proceeding indicate was the date of the tax sale to Mr. Fuentes, until the time of April 11, 2016 which was the date of your letter to him referencing the now discontinued 2 family use, did Mr. Fuentes apply to your department for any types of building permits or any other necessary permits to perform work or make utility or other connections at 106 First Street?

Building Inspector Stickles – No.

Attorney Dickover – During that time did he to your knowledge do any construction work at the location?

Building Inspector Stickles – Not to my knowledge, no.

Attorney Dickover – Was there any visible work to restore the livability of the structure during that period of time?

Building Inspector Stickles – No.

Attorney Dickover – What is the current condition of the structure if you know?

Building Inspector Stickles – Current condition of the structure is uninhabitable at this point.

Attorney Dickover – Why is that?

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Building Inspector Stickles – It has been left vacant, it has a tarp on the roof, windows need replacements and I'm not sure what the interior condition is. If the exterior is any indication of what the interior is, at this point it is not habitable.

Attorney Dickover – If construction was to be commenced there to rehabilitate this building would that require a building permit?

Building Inspector Stickles – Yes.

Attorney Dickover – At this point even as of today, has an application for a building permit been filed with your office for this structure?

Building Inspector Stickles – No.

Attorney Dickover – What was the condition of the structure back in August 1, 2015 the date of the tax sale?

Building Inspector Stickles – I am like the rest, I could only see the outside, not the inside.

Attorney Dickover – What was the condition of the outside?

Building Inspector Stickles – The condition of the outside is poor, very poor. The roof is in the same condition, there was much more garbage around and debris. The windows and such have been boarded up through time.

Attorney Dickover – There was a note made earlier that there is currently 1 water meter on the premises. If this home were designed originally as a 2 family home would there have been 2 water meters or just one?

Building Inspector Stickles – It could have been either way, whatever the owner at the time decided. They could have 1 water meter, the owner could have been responsible for the entire water and billed by including it in the rent. There is no hard and fast that you have to have 2 or 3 or 4 water meters.

Attorney Dickover – No further questions.

Jay R. Myrow– May I ask questions?

Chairwoman Pearson – Yes.

Jay R. Myrow– Building Inspector Stickles the fact that there is 1 water meter on premises doesn't lend any information as to whether it was originally a 1 family or 2 families?

Building Inspector Stickles – No.

Jay R. Myrow– The condition of the premises in October 2014 when the property was purchased by Orange County was is uninhabitable at that time?

Building Inspector Stickles – Yes, I don't think it was purchased I think it was taken.

Jay R. Myrow– There was a deed given. At that time it was uninhabitable?

Building Inspector Stickles – Yes.

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Jay R. Myrow– I went and looked at the property today, it is in bad shape. Did it have that appearance in October 2014?

Building Inspector Stickles – Yes.

Jay R. Myrow- You said that a building permit would be required for certain construction. What kind of construction requires a building permit for this renovation?

Building Inspector Stickles – In our code the only thing that would not require a permit would be flooring, carpeting, painting and cosmetics work. Everything else requires a permit.

Jay R. Myrow – When was the last time you were that premises?

Building Inspector Stickles – To make an educated guess, 5 years ago.

Jay R. Myrow – So you have no knowledge as to what improvements Mr. Fuentes may have made to the interior of the premises since the time he took title from the County?

Building Inspector Stickles – No.

Jay R. Myrow – Just to expand on that, if Mr. Fuentes went in and he cleaned up the floors and he painted and dressed up the inside he would not have needed a permit.

Building Inspector Stickles – No.

Jay R. Myrow – You have no knowledge of whether he a done that or not.

Building Inspector Stickles – Right.

Jay R. Myrow – You said that you believe that this premises was original constructed as a one family dwelling. Are there any writings or documents that you've relied on in reaching that opinion?

Building Inspector Stickles – There's no writings, the only thing I know is according to tax records and property record cards that this house was constructed somewhere around 1900 and the other homes that are on the Valley Avenue, Pleasant Avenue area in the Village of Walden were constructed at the same time their construction is totally different.

Jay R. Myrow – Is it clear that at this present time the layout of the house is clearly two families?

Building Inspector Stickles – For the last time I was in the house yes.

Jay R. Myrow – When was that?

Building Inspector Stickles – About 5 or 6 years ago.

Jay R. Myrow – So at least 5 or 6 years ago. Is there anything in the assessor's records that would suggest that there was a major renovation at any time that would have converted the property from a one family to a two family?

Building Inspector Stickles – No.

Jay R. Myrow – Are there any records in your files that would suggest that any time the property was converted from a one family to a two family?

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Building Inspector Stickles – No, I could not find any.

Chairwoman Pearson – Building Inspector Stickles how many homes in the Village of Walden roughly have been converted from one to two family without any knowledge or the building inspector coming to look?

Building Inspector Stickles – Through the years 20% of the Village of Walden.

Chairwoman Pearson – So many of them are not known because people just do it and then you find out about it later.

Attorney Dickover – The other thing that could happen is if it done prior to the Village of Walden Zoning being enacted there may have been no permits required. The Village of Walden code was enacted in 1954, so anything that was prior to 1954 probably did not require any notification or permits from the Village of Walden.

Alt Member Svarczkopf – And when the zoning was enacted it was given a two family residence zoning status?

Building Inspector Stickles – As I understand it when they did zoning and actually started to make a list of what was in the Village of Walden everything that was here was grandfathered.

Alt Member Svarczkopf – At that point it had a two family status?

Building Inspector Stickles – From our records yes.

Jay R. Myrow – What was the year the zoning was enacted?

Building Inspector Stickles – 1954, somewhere around the early 1960's the Village of Walden did an assessment of the entire stock that it had to create and come up with what actually was in the Village of Walden.

Jay R. Myrow – So it's safe to say that this has been a two family since 1954?

Building Inspector Stickles – Yes.

Attorney Dickover – Chairwoman Pearson why don't we put into the records the Orange County Real Property Reports for this property which shows the date of construction as 1900.

Chairwoman Pearson – Yes.

Attorney Dickover – Chairwoman Pearson you did receive into the records of the board a letter dated June 30, 2016 from Jay R. Myrow on his firm's letter head, together with a statement of facts and memorandum of law that should be made part of the board's records with respect to these proceedings. I don't have anything else to submit, if the board is inclined to close the Public Hearing you can do so. If you feel that you still additional information or wish to make further investigation with respect to it I would suggest that you the meeting open, until such time as you're satisfied that the board has enough information to precede with an analysis determination findings on this matter. You do need to have the record reflect the SEQRA process on this. This is an interpretation, the local code or regulations therefore a Type Two Action for SEQRA purposes once the board makes that determination you do not need to engage in any further environmental analysis for SEQRA purposes.

Jay R. Myrow - Before you close the Public Hearing, Mr. Fuentes could tell the board what his time table is, what his construction plans are, if that would help the board?

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Chairwoman Pearson – Yes.

Mr. Fuentes – An application was made to NYSEG to convert from propane gas to natural gas. The plumber that installed a meter a few days ago is the one that's taking care of that application, filling it out and proper insurance and permit if necessary.

Jay R. Myrow – Were you told how long it would be before NYSEG could get you on their schedule?

Mr. Fuentes – They don't know, it depends on what they have going on.

Chairwoman Pearson – What are your plans and timeframe for inside the house, the roof etc.?

Mr. Fuentes - The roof can be done within 4-5 months, as far as the inside of the house the plumber is going to take care of the plumbing. The inside is painting, cleaning, flooring, carpeting and vinyl tile.

Jay R. Myrow – How much of that work have you done?

Mr. Fuentes – I have cleaned all the baseboard heating covers and the heating elements and whatever was broken the plumber will repair that. We have nothing downstairs yet. It took 7 truckloads, 17' trucks of furniture, junk, dog feces, televisions etc., to the dump and I still have to do the attic.

Jay R. Myrow – What's the timeframe for the roof again,

Mr. Fuentes – I've call the roofer, he is actually a builder in the family and he will let me know when it can do it because he is busy.

Chairwoman Pearson – It already been some time since you've owned the property before you've started to fix it and that's the boards concern that's going to stay this way for another year or two.

Mr. Fuentes – Most of that time was taking stuff out of there.

Jay R. Myrow – Are you aware that you need to contact Building Inspector Stickles to determine what building permits you're going to need?

Mr. Fuentes – Yes, whatever he tells me I need, I will apply for.

Jay R. Myrow – Building Inspector Stickles one of the permits needed is for the roof?

Building Inspector Stickles – Yes, siding, windows, furnace, etc.

Mr. Fuentes – The application from NYSEG requires replacement of the windows, roof, insulation to be checked, the exterior has to be taken down completely. The siding that is wood is still fairly good and I've already bought replacement boards to repair what needs to be.

Jay R. Myrow – Does that red stuff come off?

Mr. Fuentes – Yes, it has to come off. The structural engineers report made a list of everything I need to do.

Member Matise – Is the red stuff asbestos shingles?

Mr. Fuentes – Yes.

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Jay R. Myrow - Mr. Fuentes has determined that what is underneath it is good, the wooden siding. It just needs some patching and then it will be painted.

Member Matise – What is the issue with the roof, why does Building Inspector Stickles say it has a tarp on it?

Jay R. Myrow – We have to get the roofer there.

Member Matise – Well this is July and the winter starts in October, November?

Mr. Fuentes – It's going to be done before then.

Member Matise – Otherwise you compromise the whole building and it's been compromised for a long time.

Mr. Fuentes – I put the tarp on so that the leak wouldn't continue to damage the interior.

Member Matise – Realistically when do you expect to have this building ready to be lived in?

Mr. Fuentes – That depends on NYSEG.

Chairwoman Pearson – So that will take 5 months and you will be ready to go and have people in that home? The roof will be on, the inside will done?

Mr. Fuentes – That's a little premature 5 months, we have a lot to do.

Building Inspector Stickles – Who at NYSEG told you, that you had to have all those things done before you got gas service?

Mr. Fuentes – It's in the form.

Building Inspector Stickles – This is the first time I have ever heard of that.

Alt Member Svarczkopf – How long does it take for a permit to be approved?

Building Inspector Stickles – It takes 7 days, you have to start within 3 months and it's good for a year.

Mr. Fuentes – The roof is my priority, otherwise I loose whatever I have done inside.

Member Moore – The last time we met, the board was looking for the water and sewer bills and that was to determine exactly when it appears that the property was actually abandoned. Do we have a copy of the water and sewer bills?

Chairwoman Pearson – Yes we have them, and it appears the property was abandoned in March of 2015. Are there any other questions/comments from the Board? None noted.

Jay R. Myrow - I've made clear what I think are the relevant facts in the case. I went and looked at the property and if you have someone who is willing to come in and invest in that property and fix it up to a livable space and a benefit to the neighborhood, because it clearly is not at this time, that's a good fit. It was always Mr. Fuentes intention to do this. I have represented him for years; I know he is conscientious about the properties that he does buy. You have somebody who's willing to invest significant money to rehabilitate this property and to be quite honest the amount of money it's going to take to rehabilitate it if you don't get 2 rental incomes out of it, it's going to be tough to get a return on your investment.

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The place is clearly, clearly layout as a 2 family. There are no interior common spaces to get from one floor to the other. It was advertised by Orange County as a 2 family, and Mr. Fuentes did the registration as a 2 family. I think it's a significant factor that when it is fixed up, it's going to come off what I assume is a list of properties that are troublesome in the Village of Walden.

I think you should take into consideration the extent of the work that he is undergoing, the amount of the costs. In order to do that you need to get more rental income out of this property. If there is a concern that Mr. Fuentes is not moving fast enough, he does all the work himself. Based on the number of receipts that we gave the board copies of you can see that he hasn't just been sitting on this property. Mr. Fuentes has been doing ongoing work since he did buy it.

I've outlined the law. I don't think that record shows that there has been a voluntary discontinuance for a 1 year period. I don't think you can really tact on the time Orange County owned it, because the County would not be able to demonstrate intent. Mr. Fuentes bought it, it was advertised as a 2 family, he registered it as a 2 family and he has worked on the property. So ultimately there is a good result. To convert it to a one family, it's not built that way and it's not going to generate a return based on the investment it would take if you were to add that on to it. I hope the board takes that into consideration, thank you.

Chairwoman Pearson – Are there any other questions/comments from the Board? None noted.

**Chairwoman Pearson, made motion to close the Public Hearing
Member Moore, by member All Ayes, Motion Carried**

Chairwoman Pearson – I would like to have an attorney client executive session.

Attorney Dickover – Let the record reflect that I advise the board this is an interpretation of existing code or regulation application, it is therefore a Type Two Action for SEQRA purposes and you do not need to do anything further. This matter was referred to Orange County Planning Department and there is a no jurisdiction letter so you don't have any special voting requirements. I do believe that takes care of your housekeeping with respect to the application.

If the board wishes to go into an executive session to discuss the application it should be put into the record the purpose of that meeting. One of which is to be advised what the law is in respect to abandonments and discontinuance of uses. During that question answer period you can ask me questions about the law and I will certainly give you my best advice in respect to that.

Other than that if you wish to have questions or further testimony or evidence taken you have to reconvene this meeting. If the board during the executive session decides that you are ready to make a determination tonight, you will come back to this room; reopen the meeting for those purposes. If you don't think you are going to get there tonight in fairness to the applicant and his attorney you might want to tell that now that you're not going to make a decision on it this evening and put it over until next month's meeting.

Member Moore, made motion to go into executive session to seek legal advice to be advised on issue pertaining on the law on abandonment and discontinuance of usage, seconded by Member Svarczkopf, all in favor, Motion Carried.

**Member Svarczkopf, made motion to come out of executive session
Member Moore, by member All Ayes, Motion Carried**

**Member Svarczkopf, made motion to reconvene the Zoning Board of Appeals
Seconded by Member Moore, All Ayes, Motion Carried**

Chairwoman Pearson – We were informed and advised by Attorney Dickover regarding what we needed to know and we appreciate that very much. I don't think there is any more discussion by the board. Are there any other questions/comments from the Board? None noted.

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Member Moore – I would like to thank Attorney Dickover for being able to answer our questions pertaining to law on abandonment and discontinuance.

Member Moore, made motion that the 2 family use has not been voluntarily discontinued, therefore the non-conforming 2 family use can continue in accordance to Village of Walden Law and Code

Seconded by Alt Member Svarczkopf,

Roll call vote;	Chairwoman:	Rebecca Pearson	No
	Members:	Faith Moore	Yes
		Mary Ellen Matise	Yes
	Alternate:	Dan Svarczkopf	Yes
		All Ayes, Motion Carried	

Jay R. Myrow – Thank you.

Mr. Fuentes – Thank you.

C. DISCUSSION ITEMS:

Member Moore – Is there going to be a Tri-Board meeting?

Chairwoman Pearson – I asked at the last meeting and they did not know. Building Inspector Stickles if you hear please let us know.

Building Inspector Stickles – I suggest Chairwoman Pearson you write a letter about the words you would like to take out and request that it be placed on the Tri-Board meeting.

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 Alt Member Svarczkopf, with all members voting yes.**

MEETING ADJOURNED: 930 pm

RESPECTFULLY SUBMITTED
July 07, 2016
Nancy LaMancuso
Zoning Board Secretary