

Village of Walden
Planning Board Meeting
October 2, 2017

Chairman:	Stan Plato	Absent
Members:	Jay Wilkins	Present
	Lisa Dore	Present
	Jason Trafton	Present
	Zac Pearson	Present
Alternate:	Larry Kraus	Present
Building Inspector:	Dean Stickles	Present
Village Attorney:	Robert Dickover	Present
Village Engineer:	John Queenan	Present
Secretary:	Tara Bliss	Present

Acting Chairman Wilkins - Called the meeting to order at 7:30pm.

1. APPROVAL OF MINUTES:

Member Pearson made a motion to approve the August 16, 2017 Planning Board Minutes. Seconded by Alternate Member Kraus. All ayes. Motion carried.

2. BOARD BUSINESS

A. PUBLIC HEARINGS: None

B. FORMAL APPLICATIONS:

B.1 12 Edmunds Lane, Site Plan Amendment

John Cappello with Jacobowitz & Gubitz here with Ani Kunga representing the Temple of All-encompassing Great Compassion. Last time they were here the Board approved the temporary use of trailers as religious retreats. They are here to discuss the permanent use with installation of 9 units for a potential of 36 people residing for meditation retreats. With the purpose of the temple for religious contemplation and will also be attending services and they would park there to go to the services while they are staying there. Stays will range for several weeks to months for a meditative retreat. There is no noise or traffic associated with this usage. He can go through the comments from the engineer as well.

Ani Kunga presented the details for the proposal. She thanked the Board for their support and cooperation with this project. There are 3 things they like to do in Buddhism and that is study, contemplation, and meditation. Trying to strengthen meditation branch of activities. The idea many years ago was to do one single retreat house for many people was almost approved 8 years ago but still had more work to do with the sewer. Now we have run retreats on the temple last year in the trailers and they were very successful except the facilities were not as comfortable as they had hoped they could be. Strong devotion have received careful instruction and would lock the door from the inside and stay in the retreat room for the duration of the retreat. The duration depends on the practice they are working on, it could be 2-3 weeks or 2-3 months and they receive religious advice. The most important thing is a seclusion and getting away from all distractions and noise. (She referred to the map presented) So the design of the cabins is located in the back of the property which is all wooded at the moment and backs up to the AMPAC property that is also all wooded. Many people don't use cars when they are here but do have plenty of parking space if they were to have a vehicle. Each building is plain and they have 4 rooms with a toilet and a shower in each. Furnishing would only be a small table and a bed in it. They request the Boards assistance so that we can do this without harming the Village and comply with all Village regulations. We are hoping to do this to be ready for the spring. We did this in the trailers with the temporary permission without water and hope to be able to do this with the new facilities that do have water.

Mr. Cappello commented that they reviewed the comments from the Village Engineer.

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Engineer Queenan stated that most of the comments are about cleaning up the plans. We should really look at the utilities a little closer including more details on the proposed pump station and sewer details. Most of them are all technical in nature and he spoke with Larry who is ready to address the comments.

Ani added that you have assurance that these will not be advertised anywhere, they will only be used for religious purposes and we will advertise them as such. Also the fire hydrant is closer by than the residence. The plan calls for 9 units total but they would build them as the funds are available. Right now they have money for 1 building. Hopefully we don't need the trailers at all. The square footage of each building is a little less than 800 sq. ft.

Attorney Dickover asked if the temporary trailers are now removed from the premise.

Ani replied yes they were there from April to October and the retreat began in June and ran through August and they were removed in the beginning of September. If this plan were approved they would not come back.

Attorney Dickover asked about the 4 plex definition. It is a room with own bathroom and shower but is there a kitchen or a means of cooking.

Ani replied there would be something small to heat tea with such as a small hot plate, no gas just an electric means for reheating. There will be a sink and maybe an under counter half size refrigerator and microwave.

Attorney Dickover confirmed there would be no stove or range.

Ani confirmed, just a hot plate and microwave. They will primarily be supplied food by the Temple kitchen.

Attorney Dickover said the issue is if these are becoming full residential facilities if cooking is going on in there it may meet the definition of that under our code. Perhaps creating 36 separate living facilities so we will have to look at that. The duration of the stay would sometimes be 2-3 weeks but could be up to 2-3 months.

Ani confirmed.

Attorney Dickover stated this appears to be an amended site plan and this Board had previously given this a negative declaration. This particular application will be an unlisted type action and at some point the Board would need to declare themselves lead agency and an uncoordinated review.

Engineer Queenan said it maybe involve other agencies if a hydrant is needed. Will need to wait to hear back from the County Health Department on that. We will ask and hopefully have an answer by next meeting.

Acting Chairman Wilkins asked if the buildings would be heated and cooled.

Ani replied yes, both.

Member Pearson made a motion to declare the Village of Walden Planning Board as lead agency for the 12 Edmunds Lane, Site Plan Amendment. Seconded by Member Dore. All ayes. Motion carried.

Attorney Dickover explained the Board has the option to hold a Public Hearing, don't need to make that decision tonight, just informational. He asked if this has to go to a 239 referral on this. Engineer Queenan replied he doesn't believe so.

Attorney Dickover stated that the last one was referred to the County so we will need to send a complete set of plans once the changes have been made. We should be consistent.

Mr. Cappello said they will have clarified plans and get them back to you within the week so we can begin construction.

Ani explained that the earliest usage of the buildings would be May 1, 2018 and they hope to have more than 1 if we have the funding. We are hoping to get the water line put in this month before the ground freezes.

Attorney Dickover advised that they send the plans to Dean and John for referral.

B.2 132 N. Montgomery Street, Walden Glen, Site Plan

Dave Ziegler of Atzl, Nasher, and Ziegler P.C. and Mr. Helmer, one of the owners of the property, were present. Mr. Ziegler explained that in 2004 they started this project which was then called a mobile home project. The plan was to come in and redo the units, bring in new utilities, widen the road to meet code, and replace the units which are bigger now so we would lose some. We went through site plan review and got water/sewer approval and final site plan approval subject to an easement to Winding Brook Condominiums for drainage purposes. This drainage goes to the pond on Route 52 and that just stalled and finally we have a verbal approval for that now. Now its many years later and in order to move forward somehow on this we are here to find out how to proceed. When we decided to go back in and do this we had a field meeting with Dean and John and we looked at these and it really became an issue of a big retaining wall and money. So we made changes and made the units parallel to Road A (he referred to a map of the property). When we started, whatever we did we were going to lose some units but wherever the unit came in it would have to meet code. Now with this change to Road A (the north side) we've made them meet the code. That is why we put boxes around them on the map, there is no intent to do a subdivision, just to clarify. We have a bit of an old map and a bit of the new map all in one now. We have the semi approved with the water installed up to a certain point and we have an 8 year old SEQRA so he didn't know what we need to do to move forward. We need to redo the plan and have a little bit of old with the new as its 13 years old. Since we did this drainage change the total units would be 50 and we lost 3 already from the original approval of 53. The intention is to still redo the road and the utility upgrades. There are 19 units on the property now and we have approval for 53 but we will be going to 50 total. People would own the home and rent the lot. We sell the unit and set it up on the pad for them.

Mr. Helmer is hoping with this approval we can go back and get Winding Brook to agree with what they said they were going to do. We solve their drainage problems there but he wanted to stay away from their retaining wall which is why they made the changes. Not considered trailers anymore as they are not mobile they are on a slab and are purchased by the owner. He thinks we can get approval from them and finally move forward.

Building Inspector Stickles explained that this is amended site plan because the prior approval has lapsed and the condition was never met.

Acting Chairman Wilkins asked if he was sure that he could get the easement from Winding Brook.

Mr. Ziegler thinks that if the Board approves it that they will likely get the easement agreed to from Winding Brook. He feels they are improving things for them tremendously.

Engineer Queenan thinks the cleanest way to handle this is to process it as a new application and just reaffirm the health department approvals that they already have and are likely still in place and valid. Just to make it cleaner we should do the SEQRA process over again. The plan has changed from the last time. Most of his comments are technical and related to how the Board wants to handle this procedurally. Some of the homes say proposed homes, some say replacement homes, and some say replacement manufactured home. Can you clarify that?

Mr. Ziegler explained we were trying to use the word replacement as something to supersede the new code with the area. As it is proposed on this map it would now meet the code.

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Member Dore asked if the units were occupied now and if they meet the code now.

Mr. Ziegler replied no, they are empty and do not meet the current code. Trying to put new units in to fit with the old units that were there. They had units and wanted the people to stay there. This map is a little bit of both and if we do a new SEQR it will clean the slate.

Mr. Helmer added that some folks go for the more narrow units if their needs allow and don't want a double wide but then there are some that do for grandchildren etc. They go on and pick the one they want, pour the slab, make sure it meets the code, and install them for them.

Engineer Queenan asked if they could get any kind of written confirmation agreement before the Board that Winding Brook would grant approval before going forward with this.

Mr. Helmer said yes. He just wanted to make sure the Board would accept this kind of a project before he went through all sorts of work to find out the code changed or the Board is not interested in this type of project. We met with them about 3 months ago and have gotten some messages back to see the revisions. So he wanted to have this Board see it first before he did that with Winding Brook.

Engineer Queenan agreed and doesn't want to see the project end up in the same point we were 10 years ago where they wouldn't give you the easement. Ultimately, if this moves forward they need to grant you the easement.

Mr. Helmer hopes he can have an agreement by the next meeting. The drainage goes under the state highway and into the creek.

Mr. Zeigler added that we have a few collection spots and will go behind their units into the pond at their entrance. Part of this is they have to rebuild that thing. So they are making a lot of improvements there right along the fence but plan to stay away from their retaining wall. Will put a swale in the back there. Right now it goes behind their tennis courts and this will be a new structure and pond alleviating the drainage issues there.

Attorney Dickover explained that this project never got final approval it was only conditional final approval as the conditions were never met. He wants to characterize this as it's a change to a proposed plan. This is not an amendment as you never got a final plan and it is not a new plan as you won't meet the definition of a mobile home anymore. If you want to do that you will have a problem doing what you want to do there. If you refer to this as a change to the proposed plan you can avoid all that. The SEQR issue has to be revisited, he agrees with the engineer on that. We will need to reopen the SEQR process on a change to a proposed plan. You can't have more than one single family home on this parcel and this does not have a chassis anymore so it doesn't meet the definition of a mobile home anymore. If the Board is inclined to proceed with the project he feels that is the best way to move forward.

Mr. Zeigler summarized that they need to revise the plans and make the changes to SEQR for the unit cap and get some kind of written agreement with Winding Brook then submit that and move forward.

Acting Chairman Wilkins confirmed.

Mr. Helmer commented that he loses over \$100,000 a year on this property and just hoping to make it nice and provide it for people who can't afford a new home in their later years.

B.3 Overlook at Kidd Farm, Applicants Update

Jerry Jacobowitz owner gave an update on the Overlook at Kidd Farm project which is moving forward. He has had numerous meetings with Attorney Dickover on the Developers Agreement. There are 5 unresolved items remaining. Tried to address those in his September 29th email. There are 2 that we don't need to belabor as we agree with Mr. Dickover. There are 3 things that are the issue: vested rights, obligations, & completion date. This addresses their reasoning's why they are a problem and how they affect the project. Briefly explain the issues but he is not looking for answers on them tonight. He is

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looking to have them come back at the next meeting and have a discussion to see how we could resolve it. This is not a 3 year project, it is going to take longer. That would be 204 units in 3 years which is 68 units a year which is selling 1 unit per week, 5 per month and he feels that is unrealistic. Some have been successful but no one has done 68 units in a year, not in the last 20 something years. That's a big risk for us to have a time line that is so restrictive. We cannot do this project in 3 years so we need to deal with that as the lender will be thinking about it that way. The completion date says we must finish everything in 3 years. We know because of the conditions imposed on each section we won't be finished in 3 years. What is the magic in 3 years? You will have bonds and we have to comeback every time we want a section to be approved. We are at your mercy because you want us to go back and do x, y, and z in every section. Dean will be involved doing permits and inspections, and will be your 2nd man on the front line. The Engineer will be watching our work as well. If it is not going the way it should someone will certainly bring it to your attention. So 3 years has no point and means nothing as long as you are protected and you will be protected based on the way this is all structured and the way you have your administration on the approval on your end. The other item is a technical legal one that affects the 3 years called vested rights. State law says for Villages approval of a plan that has zoning is good for 3 years against any change in zoning. We know we won't be done in 3 years as we just established. The risk is that a new Village Board could come in and change the law and since ours would only be good for 3 years and so we would be up the creek on that one. Because that is so stringent there have been law cases on this. They don't care what the time frame is because you relied on it and expended substantial amounts of money and improvements and allowed it and therefore you have vested rights by common law. That would be us because as we go through each section we will be spending money in the ground for the next section as we are working on the section before and so on. So we will have vested rights which are in the eye of the beholder. It has to be a satisfactory commitment to the improvements by financial risk and then you have vested rights. It is going to be a subjective decision and their only recourse is to go to court and get a judge to say the Village is wrong and that we do have vested rights. The lender will not be happy to lend money if you are told that right up front you may have to go to court after 3 years to establish vested rights. We can provide for that in the contract and say that the vested rights are beyond the 3 years. How long is the question? We need more than 3 but less than 10 years. It is too much risk for someone to be willing to extend credit on it and invest on this. Also the builder who would be confronted with the same analysis that the bank would be giving him. He will also say that he will be strung out and be at the mercy of the Village. Also one unhappy buyer could come to the Board to say they are unhappy with something and will be at the mercy of something that we have no control over. It's a fact of life, no way to avoid that someone will be unhappy.

Member Trafton asked if he knew of an example with the same scenario.

Mr. Jacobowitz replied yes, an example of this was in the Village of Florida NY where Mr. Mandelbaum purchased the 3rd section of the project. He went to everyone that wasn't disgruntled and had them attend the Board hearing and they outnumbered the negative, but we don't want to put in the position where someone who is disgruntled can stop us from completing a project. He had vested rights and had done the improvements and that Board was reasonable and they didn't have to take it to court. He handled it well but still it's a risk. The last item is obligations. The language proposed as he understands it, anything that is owed the Village arising out of the project such as consultant fees, building permit fees, whatever that doesn't get paid there is a lien against the property. Not saying it shouldn't be the lien or that it shouldn't be paid he is just saying it shouldn't be ahead of the buyer of the home. When you sign a contract to buy a home you put down a down payment and it can't be released until the closing. That money is called a Vendee's lien meaning that buyer has a lien against the property for that down payment. That lien would not be first because this agreement says that this lien would be ahead of their lien so now you have to convince the buyer and their attorney not to worry about that we will pay our bills and so on but the lawyer says what about if you file bankruptcy or if the builder has to have an arrangement for creditors who's first, second, etc. That buyer will be reluctant to sign a contract that says that unknown amounts could come before him. We will have disclosed this and will know that we have an agreement with the Village and that they are ahead of him. The buyer will want to know he is protected by the vendee's lien. His lien is against the property for his down payment by a vendee's lien once the

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contract is signed and sealed to buy. Normally a vendee's lien would be ahead of the Villages claims. He is not saying don't have a lien. The problem becomes when the buyer is going to sign the contract he knows there can be a lien ahead of him and therefore his lien will not be a first lien. He will know because it will be in the developer's agreement referenced on the plan so now he's on notice there. We have to have an Attorney General offering on approval from the HOA and because it's so thick and most people don't read it, the AG says on the front page you must list all the risks for the buyer if they sign a contract with you. So the buyer will know from the moment they sign a contract that there is some other lien that can be ahead of them and that knowledge defeats their lien. Same thing can happen with the bank. He would like the lien to be after the buyer and the lender. Changing the language there would solve the problem. He is not trying to take away the lien that the Village could have. So those are the 3 things he needs help with because of the practicality of the situation. He tried to identify what the risk is and see how we can address it and that goes for the completion issue and the vested rights issue. On the obligation issue there is no argument about the lien but it cannot be prior to the bank or buyer. He's worried about the lien that isn't there when the contract is signed and then the next day there is a lien put on it. Dean will have a check list before he issues a CO and collect fees. If they are unpaid they will say that it will be paid at closing and arrange for a conditional CO that payment is made to the Village. There is a way to do this in an administrative fashion so that the Village can't be fooled but can be 2nd to the buyer and mortgage holder. He feels we are down to the home stretch here and want to get these things taken care of. Get your council and appreciate your time to let him explain this to you. He is looking for a way to come to terms, not that we are against each other. He asked if he could be on the next agenda. He added for your information that with respect to the change to 10% from 20% affordable units, hopefully the Village Board will approve that as he is told it is on their next meeting agenda. The issue seems to be that we have 20 foot lots for affordable units and 24 foot lots for the non-affordable housing. If you go to 10% instead of 20% what happens with the other 10% lots that are 20 foot lots. Somehow that is bad to have them be 20 foot non-affordable. He has been waiting since April for them to make a decision. What's wrong with a 20 foot lot for someone who doesn't qualify for an affordable unit and wants a 20 foot lot? Why do they need a bigger unit? They don't, it's the same thing just slightly smaller and about \$30,000 less making it more affordable for people who don't qualify for affordable units. The hope is to get here in November to try to get a final approval. No building would take place until the spring. They have not marketed this as there are too many unanswered questions at this point.

B.4 Architectural Review, 110 West Main Street, Exterior Painting

Applicant was not present.

B.5 Architectural Review, 41 Main Street, Exterior Sign(s) and Painting

Applicant was not present.

C. DISCUSSION ITEMS:

Acting Chairman Wilkins asked if the Board could meet earlier at 7pm in executive session or at another time for the next meeting.

The Board agreed unanimously and Dean will change the meeting notice accordingly.

D. INFORMATION ITEMS: None

E. CORRESPONDENCE: None

3. COMMUNICATIONS: None

4. EXECUTIVE SESSION: None

5. MEETING ADJOURNED at 9:00 pm.

RESPECTFULLY SUBMITTED
Tara Bliss, Planning Board Secretary

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