

Village of Walden
Zoning Board of Appeals Meeting
October 5, 2017

Chairwoman:	Rebecca Pearson	Present
Members:	Carolyn Wesenberg	Present
	Gregory Raymondo	Absent
	Mary Ellen Matise	Present
	Dan Svarczkopf	Present
Building Inspector:	Dean Stickles	Present
Village Attorney:	Robert Dickover	Present
Secretary:	Tara Bliss	Present

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

1. APPROVAL OF MINUTES:

Tabled, just received them today, unable to review yet.

2. BOARD BUSINESS

A. PUBLIC HEARINGS:

A.1 34 Capron Street, Use Variance (continued from 9.7.17)

John Fallon attorney for Nikolin Marku, owner, reported on his letter that he recently sent to the Board. He turned in 10 additional certified return receipt cards and 3 received back. He submitted a map of the area marked with the type of houses that are in the area to show what they are proposing is not different than what the area presently consists of. There are 1-3 family houses, a funeral home, a vacant lot for church parking, a church, and a few apartments too on the same street. This building has been there for in excess of 100 years and it has always been a multiple residence it has never been a single family use. We are not asking for anything other than what it has always been used for. We would like to reduce the size of it to 3 family not to the prior existing 5-6 family. We also take the standpoint that there has never been a discontinuance or abandonment of the property as a 6 family use. People who have purchased it may have come upon hard times maintaining it but even the last guy had the intention to use it for a multiple family residence. That was always the purpose, no one ever came to say they don't want to continue this type of usage. The Village has previously interpreted that there has to be a voluntary knowing discontinuance rather than simply non occupancy. There has been no deliberate proof that anyone planned to abandon this as a 6 family residence as there is no other purpose that it serves. Other thing is, if we are granted this, we still have to go before the Planning Board who can put further restrictions on what we have to do. There really is not a use variance rather to say this has always been a multiple residence and should continue as a multiple residence.

Chairwoman Pearson asked if these items on this map are legal or illegal.

Building Inspector Stickles stated that anything that is existing on this map are legal or non-conforming uses.

Member Matise asked if the house is currently listed on the registry.

Building Inspector Stickles replied yes, as a one family house.

Member Matise asked if it was listed by the previous owner in the registry. When was it changed to that?

Building Inspector Stickles replied no, whatever the date is on the paper he gave the Board. It would have been taken away in 2012 or 2013 or 2014. Tom Grady was the last owner who registered it. Does not know if he had it registered.

Village of Walden
Zoning Board of Appeals Meeting
October 5, 2017

Chairwoman Pearson asked about the general contractor estimates where it says install new kitchen, she thought it was multiple kitchens.

Mr. Marku replied he probably intended to do it that way but he did one with multi-family and one with single family. \$210,000 is single family and \$230,000 for 3 family. It would be the same thing just more bathrooms.

Chairwoman Pearson thanked him for the tour of the property. It says on the estimate remove all the windows, they are shaped windows you had said you would keep the shapes, is that in there.

Mr. Marku replied yes he is going to keep the shapes but they have to be all new windows so he is replacing all the windows, most are broke.

Chairwoman Pearson said it says stripe off all siding but you said you were leave siding.

Mr. Marku explained it's dependent on the type of windows as they will be new windows not replacement windows so they may be able to fix the siding, if not they will stripe the siding, have to. He may have put stripe but it depends.

Chairwoman Pearson said it says remove all doors. What about that big beautiful door is it going to stay?

Mr. Marku replied that one will stay but whatever is broken will be replaced. Whatever is useful will stay like that one.

Chairwoman Pearson stated that Mr. Fallon commented that it was never a single family home but it was built originally as a single family home and one day in the early 1900's it was changed into a multi-family.

Mr. Marku added that the neighbors there can attest that it has been more than 90 years as apartments.

Chairwoman Pearson explained that when you bought the property you knew it was a single family which is where our dilemma is, correct.

Mr. Marku replied yes.

Chairwoman Pearson asked if someone told you how much it would take to get through this process or did you buy it and say I'm gonna try it and see what happens.

Mr. Marku replied he was trying to do the same as it was and has been since 2011. It has been since 2014 that is has been vacant and that tells you everything.

Chairwoman Pearson asked if it went to foreclosure.

Mr. Marku replied yes it did.

Mr. Fallon stated that the person he bought it from was the person who bought it from the foreclosure.

Mr. Marku explained he bought it from that owner who had the same intentions but he got sick. No one can support a 6,600 sq. ft. building no one can. You guys walked through it that is not a house that is a huge apartment building. It will sit vacant if no one does this. It is very unique house and property. Huge lot not intended to be that way. It was never intended to be a single family house. He doesn't know anyone who can support it as a single family. Would just be abandoned again. He will have to do the same as well. You saw everything there it has 6 furnaces you saw it. That house doesn't make sense for single family. You can twist the law this way and that but it was never meant to be that way. If I sell that

Village of Walden
Zoning Board of Appeals Meeting
October 5, 2017

property and I have someone interested, they would take it just for the property and the house itself will be gone.

Chairwoman Pearson asked Mr. Fallon about his letter. What she is hearing him say is that it was never abandoned so because of that it can still be used as an apartment.

Member Svarczkopf clarified that he is saying it should have never lost its status.

Chairwoman Pearson replied that the law says it did.

Mr. Fallon feels that it says that abandonment by active participation by owner to have it discontinued and no owner of this property intended to discontinue this based on the size of the property, the fact that it has 6 kitchens bathrooms etc. no one would be interested in this property other than a multiple residence.

Member Matise asked how many garbage service bills he is paying.

Mr. Marku replied it is now single family. Before there was a big container but the Village changed it before he bought.

Member Matise asked if anyone knew how many they paid prior to that.

Mr. Marku stated that the container was still sitting there when he bought it.

Member Matise explained that is maybe an indication that the Village considered it a multi-family at that time. If it had a container was not being collected after the system we have now. It has been changed since then prior to it they had to hire their own.

Member Svarczkopf asked the attorney if it was right to assume what Mr. Fallon is saying at this point. That it required active participation by the owner.

Attorney Dickover replied he has to reserve a straight out answer for further contemplation but it seems to him that the nature of the application is sounding more like the 106 First Street that was brought by a Michael Fuentes. That was an application brought for an interpretation as to whether or not the use was voluntarily changed or now, he thinks that is what Mr. Fallon is alluding to. This application was brought as a use variance if it were recast as one for interpretation then we could analyze your question but we are not equipped to hear it tonight. He has to wrap his head around it and he doesn't have what the Board would need for an interpretation to ascertain a factual pattern to decide that. But it would sound similar to the Fuentes application, 106 First Street.

Chairwoman Pearson asked if he was suggesting we hold this open and he rescind what he has done and reapply if he chose to do that.

Attorney Dickover stated it become a jurisdictional question. The Building Inspector had given a letter that said that he needed to appear before the Board for a use variance and the applicant followed that note. It was dated July 12th saying that had to deny the request and directed you to seek a use variance. We would need a new letter from the Building Inspector because we don't have jurisdiction to just change this to an interpretation which is different than a use variance. The Building Inspector could also issue a letter stating that you can also seek an interpretation and then you could analyze it under the Fuentes criteria that is a way to keep the matter going. That would not require a new fee. He think you can hold open the public hearing. You don't want to withdraw the use variance so they could recast another one for the interpretation and have both hearings go on at the same time which we have done many times before. Typically calls for you to make an interpretation and if it is favorable to the applicant you can proceed to the variance. On the other hand if it is an interpretation that it never lost its non-conforming use you no longer need a use variance. You don't have jurisdiction to change this to an interpretation.

Village of Walden
Zoning Board of Appeals Meeting
October 5, 2017

You have to interpret your own code many times in a use variance. But here it is a little different as you have established some precedent with the Fuentes decision. He would have to look into it. He thinks it is a fair request if the applicant wants to go that way but equally fair that he gets the opportunity to wrap his head around that to see what proof was presented in that case.

Member Svarczkopf asked if we could decide on the use variance right now.

Chairwoman Pearson replied that if we do that it's denied then he has to start over again.

Attorney Dickover feels it does call for another mailing and another legal notice because the nature of the application has changed if they decide to do that, similar to the Rose House.

Chairman Pearson would then call for a motion to hold the Public Hearing open and have the applicant make another application for an interpretation. You would need to do a second mailing.

Mr. Fallon replied yes they would like to do that.

Attorney Dickover commented that just now reading the Fuentes decision the Board would have to determine if the use was voluntarily discontinued. In that case they had to analyze if the building was designed for 2 family use and had to ascertain if the statute of limitations was a 6 month statute or 12 months. This house was originally designed as a single family which triggered a 12 month period of time. So a 12 month period is what would apply. The third factor was whether the multiple family use was voluntarily discontinued and it was found that the applicant filed the statement of registry within the 12 month period of time which established that it indicated no abandonment of use and that the applicant continued to make improvements to the house, albeit slowly, confirming non abandonment of use. For this current applicant focus will be mostly the same; what did you and prior owners do to preserve and to maintain a multi-family usage. That would be the focus of your inquiry. Is it worth taking a crack at it is a question for the applicant.

Chairwoman Pearson added that perhaps the person he bought it from can come and share part of what his plans were at the time.

Mr. Marku said that maybe he could write a letter or come to the meeting.

Attorney Dickover said that family members that were involved could come with you.

Mr. Marku said that his intentions were the same and he got sick and couldn't do it.

Chairwoman Pearson added that had he even come or sent his attorney with his plan for the 3 apartments that might help.

Mr. Marku replied he didn't have the money to do it.

Chairwoman Pearson said yes, but he had an attorney.

Member Matise added that he could say why he bought the building and what his intentions were.

Member Svarczkopf said it doesn't matter because before he bought it, it was gone. Last one was whether they had done it, it was a timing issue. There is no timing issue it was 2013 that it sat empty so whomever owned it at that point, their intention doesn't matter. His question is whether or not occupancy is needed for it to continue down this path that would be an indicator for him.

Attorney Dickover replied that occupancy is certainly an indication that there is no intention to abandon use. You may remember this whole discussion about intention that the present law in NY absent

Village of Walden
Zoning Board of Appeals Meeting
October 5, 2017

language to the contrary is that when you measure abandonment with a specific time, 6-12 months, you don't need intentional abandonment any longer. However in Walden your code says voluntarily discontinue which puts intent back into it. So now to show abandonment you need to demonstrate intentional or an act shown to abandon it.

Member Svarczkopf agreed and said that as an owner he can say that he wants it to sit there as a multi-family home and not rent it and in that case it is not voluntary. Building Inspector could have interpreted it a different way while the intention of the owner may have been different.

Chairwoman Pearson agreed and said that is why if he brings the older the owner here and says that he had always planned to redo it and knew he had to go before the Board.

Member Svarczkopf said the problem is it is not him, it's the owner before it went into foreclosure. It was totally unoccupied before Grady. Getting that person back here would be insane. So it might not be worth the effort.

Mr. Fallon stated it might be worth the effort for my client.

Chairwoman Pearson stated that foreclosure is not voluntary.

Member Svarczkopf replied ok, then knowing all of that can we say to Nico now that we understand all of that now this is interesting not voluntary and grant a use variance or what he applied for.

Attorney Dickover stated that it appears that this is a self-created hardship as he knew of the zoning when he bought it. That is a fatal flaw in the use application where if you revert it back to an interpretation like what was granted for 106 Fist Street that element is no longer part of the analysis.

Chairwoman Pearson stated that the attorney had mentioned a non-conforming to another non-conforming use; what does that all mean?

Attorney Dickover stated that hasn't been brought up yet tonight so he is not sure if we are going down that road or not.

Member Svarczkopf commented that being aware of an interpretation and thinking that it's wrong doesn't create a hardship. That's an "I think this interpretation is wrong" he doesn't see that as a self-created hardship. He sees it as the zoning.

Attorney Dickover stated that the knowledge that it was a single family and purchasing it is a pretty classic self-imposed hardship.

Chairwoman Pearson stated that Mr. Fallon did argue that a little bit in his letter.

Attorney Dickover stated if it is recast as interpretation that the non-conforming use was never lost that has no self-created hardship issue as it is no longer an element.

Chairwoman Pearson agreed and said if he can get people to come in and say that it was used and had intentions to use it that way as well it would behoove you to do that.

Member Matise stated that the garbage supports that and the small cities grant they had in the 1990s where they made additional apartments.

Mr. Marku agreed that there was a grant for multi-use. He had issues with that at the closing.

Village of Walden
Zoning Board of Appeals Meeting
October 5, 2017

Member Svarczkopf added that owning a house and not actively turning it back into a single family home would not be voluntary as well.

Member Svarczkopf made a motion to adjourn the public hearing and give Mr. Marku time to apply for an interpretation for 34 Capron Street. Seconded by Member Matisse. All ayes. Motion carried.

Mr. Marku asked if it required the mailings again.

Chairwoman Pearson stated yes.

Mr. Marku argued why the neighbors need to know about it again.

Attorney Dickover asked if he wanted to get a good solid approval where no one would be able to challenge you.

Member Matisse stated that the notification is a state law. He has already been told by Dean that he can fix the roof.

Mr. Marku stated he understood, it was just a lot of money to expend again.

Chairwoman Pearson stated that they will get the mailings out and get us information before the meeting and it will be on the agenda for the November 2nd meeting.

A.2 16 Berwick Avenue, Area Variance

Member Wesenberg made a motion to open the public hearing for the 16 Berwick Avenue, Area Variance. Seconded by Member Svarczkopf. All ayes. Motion carried.

Mr. Miller, property owner, turned in his mailings.

The Board confirmed that they sent out 21 and got 19 returned.

Mr. Miller stated that his intention is to close in his deck and there is one part of the deck that will have to go out longer. Looking to go out 240 square feet to have a nice size room where we can finally have all of our family there. Our daughter lives right next door who is the only neighbor who this would be affected by. He showed photos to the Board with various viewpoints from different neighbors' homes.

Chairwoman Person asked if he was leaving the extra piece of porch or taking that off.

Mr. Miller stated it is going to extend which is where it will encroach. This part abuts the Town on Jeff's land.

Building Inspector Stickles stated that the new deck is too close by 2.4 feet on the side and 2.3 feet in the rear. He has an original open deck that didn't have to meet any setbacks. Now putting a structure on that to make it part of the house which means that now it doesn't meet the 15 and 30 feet set back.

Chairwoman Pearson asked if there was a Village easement on the side of the house.

Mr. Miller stated no, just private people.

Member Svarczkopf asked if he planned to build underneath as well.

Mr. Miller replied no, just on the top.

Village of Walden
Zoning Board of Appeals Meeting
October 5, 2017

Member Svarczkopf asked if the Village code requires a 15 foot setback for any enclosed structure.

Building Inspector Stickles replied no, in the R3 zone from the structure to the lot line has to be a minimum of 15 feet. The rear line is 35 feet so they will be 2.8 feet and 2.9 feet too close. That is what they are looking to encroach on that setback.

Member Matise asked if it is not overstepping the deck that is already there.

Member Svarczkopf replied yes it is.

Mr. Miller stated the deck was there when he bought it and he extended it.

Chairwoman Pearson asked about the road by their house, is there plans to extend the road there.

Mr. Miller stated it is a dead end by his house and Jeff's driveway is right along the property on Berwick and Donna Christie Lane. His back yard abuts his whole field back there.

Member Matise confirmed there were no utilities back there.

Mr. Miller stated no. From the views provided none of his neighbors will even see his house. His daughter owns the home next door and doesn't care and the Grismer's, the next house up, already has an addition.

Member Svarczkopf asked if he was doing the work himself.

Mr. Miller stated that his brother in law is the contractor doing the work.

There were no members of the public present to make any comments.

Member Wesenberg made a motion to close the public hearing for the 16 Berwick Avenue, Area Variance. Seconded by Member Svarczkopf. All ayes. Motion carried.

B. FORMAL APPLICATIONS:

B.1 16 Berwick Avenue, Area Variance

Member Svarczkopf made a motion for Negative Declaration under SEQRA and typed the project as a Type II action for the 16 Berwick Avenue, Area Variance. Seconded by Member Matise. All ayes. Motion carried.

Attorney Dickover suggested the Board review the 5 factors associated with an area variance and make their findings with respect to each.

The Board reviewed aloud the 5 factors associated with an Area Variance:

a. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance?

Chairwoman Person spoke for all by answering no.

b. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?

Chairwoman Person spoke for all by answering no.

c. Is the requested area variance substantial?

Chairwoman Person spoke for all by answering no.

Village of Walden
Zoning Board of Appeals Meeting
October 5, 2017

d. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Chairwoman Person spoke for all by answering no.

e. Was the alleged difficulty self-created?

Chairwoman Person spoke for all by answering no.

Member Svarczkopf made a motion to approve the 16 Berwick Avenue, Area Variance as requested. Seconded by Member Wesenberg.

Roll call vote:	Chairwoman:	Rebecca Pearson	Yes
	Members:	Carolyn Wesenberg	Yes
		Mary Ellen Matise	Yes
		Greg Raymondo	Absent
		Dan Svarczkopf	Yes

All Ayes. Motion Carried

C. DISCUSSION ITEMS:

Chairwoman Pearson asked the Board wants the definition of family to be tightened up and have our Attorney write something for the Village Board to review. Would we like that to happen?

The Board agreed.

Member Svarczkopf stated there are many reoccurring things coming before us now so this current type of application we have before us now needs to be tightened up as well as he disagrees with some of these topics coming before us.

Member Matise agreed as it sticks the owner and then it sticks the Village as it sits vacant and is not on the tax rolls let alone the way that it looks.

Member Wesenberg made a motion to enter into executive session to receive legal counsel from the Village Attorney. Seconded by Member Svarczkopf. All ayes. Motion carried.

Member Svarczkopf made a motion to reconvene the regular meeting. Seconded by Member Wesenberg. All ayes. Motion carried.

D. INFORMATION ITEMS: None

E. CORRESPONDENCE: None

3. COMMUNICATIONS: None

4. EXECUTIVE SESSION: None

MEETING ADJOURNED: 9:18pm

RESPECTFULLY SUBMITTED

Tara Bliss, Zoning Board of Appeals Secretary