

Village of Walden
Zoning Board of Appeals Meeting
February 1, 2018

Chairwoman:	Rebecca Pearson	Present
Members:	Christine Scieurca	Present
	Gregory Raymondo	Present
	Mary Ellen Matise	Present
	Dan Svarczkopf	Present (Late arrival)
Alternate Members:	Jessica Metzger	Present
Building Inspector:	Dean Stickles	Present
Village Attorney:	Robert Dickover	Present
Secretary:	Marisa Kraus	Present

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

1. APPROVAL OF MINUTES:

Member Raymondo made a motion to approve the December 7, 2017 minutes. Seconded by Member Scieurca. All ayes, 0 nays, 0 abstentions. Motion carried.

2. BOARD BUSINESS

A. PUBLIC HEARINGS:

A.1 54 Valley Avenue, Use Variance

Thien Nguyen, owner Hoang & Nguyen Bros, LLC 54 Valley Avenue, submitted his mailings to the Board.

Member Matise counted and verified the mailings sent out and they sent out 59, 9 were returned unclaimed, and got 44 green cards returned.

Attorney Dickover confirmed the public notice of publication is in the file.

Chairwoman Pearson replied yes.

Attorney Dickover asked for the date of their letter.

Chairwoman Pearson replied November 6, 2017.

Attorney Dickover confirmed the County referral came back for local determination. Lead agency

Member Scieurca made a motion to declare the Village of Walden Zoning Board of Appeals as lead agency for purposes of a SEQRA review and to type the application as a Type II action for the 54 Valley Avenue, Use Variance. Seconded by Alternate Member Metzger. All ayes. Motion carried.

Chairwoman Pearson asked the applicant to describe what they are applying to do at the property that has reverted back to a single family status.

Mr. Nguyen replied that it was originally a two family and he wants to keep it like that but needs to make it legal.

Chairwoman Pearson asked confirmed he was doing work to the house currently and asked what type of work he was doing.

Mr. Nguyen replied when they bought it, it was a mess and they wanted to remodel. They replaced the deck on the side, ripped nasty carpet out, remodel a little inside to.

Building Inspector Stickles said he's allowed to remodel 1 apartment.

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Chairwoman Pearson asked if he was remodeling one apartment or 2 at this time.

Mr. Nguyen replied 2. He is just painting because the carpet was so dirty.

Chairwoman Pearson confirmed he received the letter from the Building Inspector.

Building Inspector Stickles said he sent a stop work order and after that a letter with further instructions.

Mr. Nguyen admitted to receiving the stop work order and he went to go see the Building Inspector. Just painting in there, not doing anything in there. Applied for the window but haven't done the front deck yet.

Chairwoman Pearson asked if it had a shared driveway

Mr. Nguyen said yes.

Member Scieurca asked about the work he was given permits for, did he complete that work.

Building Inspector Stickles replied that he hasn't asked for a final inspection yet.

Mr. Nguyen said they aren't finished with the front deck yet, that is why. It's too cold.

Member Raymondo asked when it was converted.

Chairwoman Pearson Becky said it was built as a 2 family what she would call a duplex. It was left empty and with the abandonment issue in the Village, it was reverted back to a single family home.

Member Raymondo asked how it converts back to one if it has 2 units.

Chairwoman Pearson replied the Zoning district it is in is for single family.

Building Inspector Stickles explained it was built at the turn of the century and was an R2 Zone. The Village rezoned in the early 50s which was rezoned R5 which made most homes non-conforming. With the vacancy of the property for a year, it lost its zoning and they are here to try to get that use back.

Chairwoman Pearson added that the Village doesn't have the code to support the 2 family home that is non-conforming in a single family area.

Attorney Dickover confirmed.

Chairwoman Pearson explained he has to show a hardship, there is a criteria for that which involves money and how much it's going to cost us. If you have a hardship he needs to show us what that hardship is.

Alternate Member Metzger asked if the home is set up with 2 kitchens and have 2 separate entrances.

Mr. Nguyen said yes. He said each unit has 3 bedrooms and 1.5 baths.

Alternate Member Metzger asked if would be converted is it an upstairs and downstairs.

Mr. Nguyen confirmed.

Alternate Member Metzger said she grew up on Valley Avenue in the 70s and 60% of the street was 2 family some even more. So currently it is set up as though it is a 2 family. So you would have to take a kitchen out for it to go back to a single. Interesting that it was set up that way and the past owner let it go. It has a common driveway. She asked what the adequate parking for the two homes is.

Mr. Nguyen said they have a driveway on the back for 2 cars. Next to his neighbor, he do that too.

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Le Hoanoj, co-applicant/owner, explained they already spoke with neighbor and he agreed.

Building Inspector Stickles said there is currently no electric in this building either.

Member Svarczkopf arrived. He asked the timeline to finish the work if it was granted.

Mr. Nguyen replied about a month.

Alternate Member Metzger asked if they would oversee the building or hiring an agency. Will they act as the supervisor or have an agency collecting rent and checking on the property.

Mr. Nguyen said no they would live locally in Newburgh/New Windsor.

Chairwoman Pearson asked if they were fixing it up to sell it.

Mr. Nguyen said yes.

Chairwoman Pearson stated that to go further do we get into hardships now. Usually the applicant brings us documents showing the hardship with estimates of how much it will cost to do the renovations, how much they can sell it for, etc. They need to demonstrate a hardship that is telling the Board why they should grant this variance, not just that it was a 2 family so you want it to be a 2 family again.

Attorney Dickover stated that this is a use variance which is governed by the 4 factors test. The applicant has to demonstrate they will not realize a reasonable financial return on the property by submitting competent financial evidence. They have to be able to prove they are not getting a reasonable financial return based on the permitted uses in this zone. This property is located in the R5 zone in which a single family use or some other things such as a school are permitted. It is unlikely they could sell the property for those certain purposes. The other factor is that they also have to prove the hardship is unique and is does not apply to the other houses in the neighborhood. The third issue is that the variance, if granted, will not alter the character of said neighborhood. And the fourth issue is that the hardship cannot have been self-created. Was the applicant aware of the zoning at the time of the purchase of the property? If that was the case then it would be fatal to their application.

Member Svarczkopf stated that he lives 2 doors down. This house has been empty since he has bought is home and he can't stand that it is empty. He doesn't care how we put people in it, we gotta put people in it. Within the last couple years they have redone houses, and his property value has gone up since then. That can't affect his decision here but as a member of the public, he would be really upset if we couldn't find a way to make a home that was originally built and has always been a 2 family home stay a 2 family home.

Member Scieurca asked if there are any other 2 family homes in the neighborhood. Essentially it would not change the character of the neighborhood if there were.

Building Inspector Stickles said there are other 2 family, 3 family, & 4 family homes in the neighborhood but none of them have variances. They are left over from the zoning change and have been maintained as those uses through the years.

Member Scieurca confirmed that there are already multi-family homes in the neighborhood. Maybe not done by variance but there are homes so it wouldn't change the character of the neighborhood.

Chairwoman Pearson asked when the zoning changed there.

Building Inspector Stickles said the zoning changed somewhere in between 1952-54 when zoning came to the Village, before then it was R2.

Alternate Member Metzger asked if they knew when they bought the home that it had been reverted to a single family home.

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Mr. Nguyen said he had the title search but he couldn't go inside. He bought it in an auction.

Alternate Member Metzger asked if he believed it was a 2 family home or that it was a 2 family that had been reverted back to a single family.

Mr. Nguyen said he didn't know before he made the deposit. They believed it was a single family home when they bought it but believed it was a duplex house as it has two entrances. It was listed as a 6 bedroom, with 2 full baths and 2 half baths as a single family home.

Alternate Member Metzger said she would love to see it as a 2 family. It would be fantastic if the Board could find a way to grant them this variance.

Chairwoman Pearson agreed that it would be fantastic but it would also set a precedent. That's why we have a criteria to follow.

Mr. Nguyen usually it is a rented property they want something like a mother daughter to live together next door and can take care of the property together.

Chairwoman Pearson said we aren't disagreeing with you.

Mr. Nguyen said that the owner before him rented to very bad renters.

Member Svarczkopf asked if it would be possible to build both apartments and sell it as a single family mother daughter property.

Building Inspector Stickles replied mother daughter is not an allowed use in the Village anywhere under any code. It can be converted back to a 1 family. It would have to be one family living and sharing the inside of the dwelling.

Member Svarczkopf asked if they needed to be connected on the inside or could they just live side by side as one family.

Building Inspector Stickles replied yes they have to be connected. This house was constructed as a duplex and in today's world it would have to be converted totally to a single family home. They would have to be able to walk from the right side of the house to the left side of the house inside.

Member Svarczkopf asked if that was the definition of a 1 family house. He feels like they could be one family under one roof but don't want a shared entrance is there a formal definition.

Building Inspector Stickles said yes in the state code book there is a definition.

Member Svarczkopf said that he feels that it is ambiguous enough to grant this. To build them as separate but single family homes.

Member Raymondo added that it has separate utilities. It is impossible to convert the utilities back.

Chairwoman Pearson said that we don't know that as we don't have that in front of us.

Member Scieurca asked for clarification about when they made the offer on the house that they knew it was a one family house or did they believe it was a 2 family house.

Mr. Nguyen said they thought that it was a 2 family.

Member Scieurca asked if when they put their deposit down if they were locked in to purchase the home.

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Mr. Nguyen replied yes. Not until the title search was done that it was 1 family. When he looked at it from the outside everything looked like it was set up for a 2 family house.

Member Svarczkopf confirmed from the outside it looks like a 2 family home.

Alternate Member Metzger asked if it said one family or two family at the auction.

Mr. Nguyen said it only said 6 bedroom.

Chairwoman Pearson asked if he had an attorney.

Mr. Nguyen replied yes.

Alternate Member Metzger said she grew up in the area and in a duplex on that street and they connected in the basement and the attic. Is this house set up that way? Could you get from one side to the other side without having to go outside of the house?

Mr. Nguyen said he doesn't think so. He believed it was a two family at the auction, not a one family.

Chairwoman Pearson asked if it was a County auction.

Mr. Nguyen said it was an online auction.

Chairwoman Pearson asked if there was a way to look up on the side what it was listed for to find out.

Mr. Nguyen said sometimes when they list it they get it wrong.

Chairwoman Pearson explained that going thru the criteria that we have to go through, we need more information. We don't see financial money. We don't know how much it's costing to fix it, what he is expecting to get out of it, why he is going to sell it.

Member Svarczkopf agrees that we don't have numbers on paper that it's self-evident that it's clearly self-evident that it will cost a ton of money to convert it to a single family from a 2 family.

Chairwoman Pearson replied that we don't know that. The house on Scofield Street went back to a single family from a 2 family because we said no to that house when it came before us and it was sold as a single family home. So that doesn't fly with her. There are no numbers showing anything. Perhaps they are doing the work themselves, maybe it won't cost them that much.

Member Matisse agreed that they have to provide us some numbers. They have to show the cost to change it back or keep it the way it is.

Mr. Nguyen said to convert it back to 1 family would be hard because it's set up as a 2 family already. Chairwoman Pearson said there is no electric. She understands that we want people in homes but we sit here as a legal entity, this is our job.

Member Scieurca agrees with the Chairwoman. They have not satisfied the criteria and would like to see what it's going to cost from contractors what it's going to take to convert it.

Member Matisse said they also need to show what they would sell it for.

Attorney Dickover reminded that the applicant needs to provide all that, you can't just do your own research.

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Mr. Nguyen said that if we convert back to a 1 family we would have to do the whole system in the whole house.

Member Scieurca said we need the numbers.

Chairwoman Pearson said we need to see on a piece of paper how much it's going to cost to do it. They would have to prove the 4 criteria. Would have to go back down there to see what other homes look like. Not knowing whether it was bought as a single family hasn't been proven either. They could bring us the listing.

Member Svarczkopf said that the application says they were advised it was a 2 family home.

Member Scieurca said usually at an auction you go look at the outside and you roll the dice and take it as is. She is assuming they did that.

Chairwoman Pearson asked for the listing. She commented that the attorney that represented you should have done the research and advised you.

Member Scieurca said they knew once they had the deposit.

Chairwoman Pearson said they put down their deposit and then don't they have every opportunity to go out and check what the house is going to be.

Member Scieurca replied you are buying the house as is in an auction. Doesn't matter if it's a single family or a hostile.

Chairwoman Pearson stated that is not a hardship to her, sorry. So we could hold public hearing open if the applicant would like to come back and show us financial information. We would like to see what the costs would be if you converted it back to a single family, if you would like to demonstrate what that hardship might be. If you are going to put in one furnace or if you are going to put in two or how much you plan to sell it for. Give us some money guidance that would create the hardship that is what they are looking for. Come back with information from a contractor etc. just give us some money guidance

Member Raymondo said he thinks it's probably over a hundred thousand.

Alternate Member Metzger said that Orange County tax has it listed as a 1 family residence.

Member Svarczkopf asked if it has 2 addresses.

Alternate Member Metzger confirmed it say 54-56 and is listed as a single family home. She added that clearly it's not going to change the aesthetic of the neighborhood.

Chairwoman Pearson replied that she isn't disagreeing but we need the information so that we can do our job that is what we are here to do. She asked the applicant to bring the information for the next meeting showing the difference of if you kept it as a single family or if you had it a 2 family, what you bought it for or what you would sell it for, all of that. If he can get it to Dean before the meeting, that would be great.

Mr. Nguyen replied ok.

Member Svarczkopf made a motion to adjourn the public hearing for 54 Valley Avenue, Use Variance until the next regularly scheduled Zoning Board Meeting. Seconded by Member Scieurca. All eyes. Motion carried.

B. FORMAL APPLICATIONS:

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B.1 54 Valley Avenue, Use Variance

Adjourned until the next regular meeting.

C. DISCUSSION ITEMS:

Member Matisse asked about the Village law, how is that going.

Attorney Dickover replied that the law generated by the Capron Street issues has been drafted.

Member Svarczkopf asked if there was any possible way to see the draft.

Attorney Dickover said it's available, Mr. Revella should have it. We changed the length of time on whether or not it was deemed abandoned.

Chairwoman Pearson asked if we could put the word duplex and put in a definition instead of 2 family. A duplex to her means it was built that way. A 2 family means it is something that was an old house converted into a 2 family and wasn't originally built that way.

Attorney Dickover asked to back up 5 months. The Capron issue was generated by a concern by Village people that you preserve historic important or architecturally important homes in the Village that were so large couldn't convert back to single family. So when we changed the definition on how you can abandon these properties we put in that they had to be of architectural historic importance to the Village; it was put in there as part of the criteria. You have to remember that the reason for zoning in the first place in non-conforming homes to lose their non-conforming use is to bring your zones into some conformity. It's so that you don't have this hodge podge of uses in your neighborhoods. It doesn't matter if it's a 2 family or a 15 family the idea is that these non-conforming uses are supposed to go away. If you have a duplex that is non-conforming and it's been abandoned it loses its use and the reason for your zoning board is to make these things to go away over time.

Member Matisse said there are quite a few duplex like this one.

Attorney Dickover stated that the Capron Street issue was about an architecturally important structure in the Village that is a separate issue. If you want every duplex to go before the zoning board then that is a zoning change that should be a Village Board issue. That is why the use variance was withdrawn because they weren't going to get that from this Board for Capron Street and homes similar.

Building Inspector Stickles said he has made his comments and he didn't get anything back yet.

Member Matisse stated we have quite a few.

Building Inspector Stickles replied that they are all over the County not just the Village. They only come to the Board is when the owner no longer wants to maintain the property. It only loses its use when you can document when it stopped its use. The proposed law has wording in there that will take care of what Mary Ellen is talking about.

Member Svarczkopf said it's not historically significant.

Building Inspector Stickles said that there are 2 different criteria one for multifamily and another for 2 family. But this guy has to provide 4 parking spots off street and he says he can do 2. Are we going to grant variance for that?

Member Matisse said that Faith said she is going to bring it up at the Board meeting.

Chairwoman Pearson said she's said that before.

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Building Inspector Stickles added that there are a lot of underlying questions more than what was in the local law. He hasn't heard anything since he gave those comments.

Member Svarczkopf said we're talking about properties that were not legally non-conforming in the last 10 years so you never really had it to begin with and you lost it. We are saying we don't care how you got it, legally we reserve the option on giving it back.

Chairwoman Pearson said that is so many homes in the Village that is opening something else altogether.

Member Svarczkopf clarified if they came before this Board and got a variance or they were legally non-conforming for the last 52 years or whenever that zoning was put into place that is what he is talking about.

Chairwoman Pearson said that is basically what it says.

Attorney Dickover said if you grant a use variance it becomes a conforming use forever.

Member Svarczkopf asked what if it goes vacant.

Attorney Dickover said it doesn't matter, it is a legal conforming use if you grant the variance permanently. This Board needs to understand what a self-created hardship is. You are deemed to know what the law is as the purchaser, it doesn't matter if they know or not. I didn't know doesn't excuse them from a self-created hardship. If they can get over that hurdle then they need to get the financial criteria where they will not realize a substantial return for any permitted use in the zone. They have to be able to prove that they can't use it any other way.

Chairwoman Pearson said that is why it is difficult to sit on this Board because hardships are involved no matter what we may want to happen.

Member Svarczkopf commented it's just not his heart. He thinks it is the wrong thing to do with the Village even though it's the law. Has nothing to do with being difficult.

Chairwoman Pearson reminded the new members that they need 4 hours of training a year.

D. INFORMATION ITEMS: None

E. CORRESPONDENCE: None

3. COMMUNICATIONS: None

4. EXECUTIVE SESSION: None

MEETING ADJOURNED: 8:33pm

RESPECTFULLY SUBMITTED
Tara Bliss, Zoning Board Secretary