

Village of Walden
Zoning Board of Appeals Meeting
August 2, 2018

Chairwoman:	Rebecca Pearson	Present
Members:	Christine Scieurca	Present
	Gregory Raymondo	Absent
	Mary Ellen Matise	Present
	Jessica Metzger	Present
Alternate Members:	Michael Ciardullo	Absent
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:

Member Matise made a motion to approve the June 7, 2018 minutes. Seconded by Member Scieurca. All ayes. Motion carried.

2. BOARD BUSINESS

A. PUBLIC HEARINGS:

A.1 101 Wait Street, Area Variance

James Gida, owner 101 Wait Street, provided a new map for the Board's review.

Chairwoman Pearson confirmed he is getting rid of the second driveway, correct.

Mr. Gida replied yes and the sidewalk as well.

Attorney Dickover explained the area variance for the side yard setback in the amount of 5 foot 6 inches is all that is required after this revised plan.

Chairwoman Pearson stated it is a much better plan.

Attorney Dickover explained that the Board had reviewed and declared negative declaration back in June.

There were no other comments from the public or Board.

Member Matise made a motion to close the public hearing for 101 Wait Street, Area Variance. Seconded by Member Scieurca. All ayes. Motion carried.

A.2 25 Valley Avenue, Use Variance

Chairwoman Pearson stated that we are continuing the public hearing for this application. She asked for comments from the public.

Brenda Adams, 31 Valley Avenue, reiterated that the property lines run crooked but the houses are built straight to the street so anything that happens in that back yard moves closer to the property line the farther back you go. That is just the way it is for all these years. The only property being affected is hers and it is far from her house and the logical place would be to move anything towards her property. It is empty compared to the property next door instead of putting 2 structures together for privacy and for safety and for the lack of the use of the driveway and access to the back yards. The other neighbor was using access to back yard just this last week to take down a tree so you don't really want to cram things to close together.

Chairman Pearson stated that the applicant sent a letter to the Board, would you like to address that.

Re & Pamela Hagele, owners of 25 Valley Avenue, explained he sent the letter to the Board hoping to convince you that you have the authority and ability to treat this solely as an Area Variance and as such

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we would not be required to go the Planning Board which he feels is an unnecessary burden we would certainly like to avoid. He had read the code several times and struggles to think to understand what the line of thought was with that particular section and how it would apply to residential units within the Village especially in our neighborhood. Specifically section 305-54 (D).

Chairwoman Pearson replied that she did some research on this for him and from the 2000 minutes. She read the following except from the Board of Trustees minutes from July 25, 2000: "Mr. Dowd stated that he has prepared a local law amending Chapter 148 of the code of the Village of Walden entitled "Zoning" to modify the power of the Zoning Board of Appeals to grant special variances in certain circumstances. He further stated that what this is trying to address is a reoccurring issue which occurred last year of an applicant going before the Zoning Board of Appeals seeking a variance to allow to do something that isn't allowed in that zone. It gets approved by the Zoning Board and then is allowed to by-pass or circumvent from going before the Planning Board for specific site plan approval. They are getting building permits and certificates of occupancy without site plan approval. This would close some of the gaps. He proceeded to further explain the local law."

Mr. Hagele doesn't feel they are requesting to do something not allowed in the zoning.

Chairwoman Pearson replied you aren't, but it is under that part of the code so it is where it falls under that law and we are part of that and that is what we follow.

Mr. Hagele replied he doesn't feel the Board is shackled by that. He believes you have the authority to say that this is an area variance and that doesn't apply. That is what he is hoping his letter convinced him to do.

Member Metzger asked for the estimate we asked for.

Mr. Hagele replied yes he would provide it however he hasn't gotten a quote on what the rebuild would be back in 2000. He thinks we have established that we are pretty okay with that.

Member Metzger replied she is comfortable with what she had stated last time regarding that part.

Mr. Hagele interjected however he is giving this quote with the caveat that he really doesn't feel this should be sent to the Planning Board.

Member Metzger replied she understands but the Board did ask for an estimate, can you hand it to the Chairwoman please.

Mr. Hagele added that the estimate does not include the porch as discussed.

Member Matisse asked how many trees have to come down.

Mr. Hagele replied a few scrub trees but nothing big. One branch off one big maple that is close by. The small maples we are keeping as it is a nice screen from Brenda's house.

Member Scieurca asked who signed the estimate.

Mr. Hagele replied that he did.

Member Scieurca thought it would be signed by the contractor not the homeowner.

Chairwoman Pearson replied if he is going to approve the work he would sign it.

Mr. Hagele stated he can get one signed by the contractor.

Chairwoman Pearson confirmed that his issue is because of the way it is in the code book and you have to go before the Planning Board you don't want to do that.

Mr. Hagele replied that is exactly what you are hearing. He feels it is an unnecessary expense and burden for exactly what purpose.

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Member Matise stated that historically the purpose was stated in 2000 and at that time your house was in a B3 district which changed in 1993 and is now in R5. The 1996 amendment had to do with church signs so that didn't affect what we are talking about. In the year 2000 Kevin Dowd was trying to plug the gaps of people not going to the Planning Board. So that is the part that you are not taking exception to at this point. By that time you were having come out of a B3 which was housing in a B3 and now housing in an R5 which is a residential zone. What created the non-conformity?

Mr. Hagele replied that the setback creates the non-conformity.

Member Matise said she understands that but historically goes back to that 1903 map.

Mr. Hagele stated that makes my argument that it is not a self-created hardship.

Member Matise replied that might come into play that is part of the whole issue this is a complicated issue.

Mr. Hagele stated we bought house in 2013.

Attorney Dickover replied that it is a non-conforming building because it doesn't meet current side and front yard setbacks requirements. It doesn't conform today so whether it conformed in the past or not doesn't matter, it doesn't conform today.

Chairwoman Pearson asked hypothetically, she has a house on a street and she has normal yardage on either side. Her setbacks are allowed in the current zoning and if she wanted to add an addition to the back she wouldn't have to get a variance at all.

Attorney Dickover replied that if you meet all current setback requirements you would not meet a variance.

Member Metzger stated that you wouldn't be declined by the Building Inspector to have to come before this Board.

Chairwoman Pearson asked why she wouldn't need one, oh because my house isn't non-conforming. So the real issue is it started out being a non-conforming home in the first place.

Attorney Dickover replied if you have a non-conforming building that doesn't meet current bulk area requirements in your code.

Member Matise asked when it became non-conforming.

Attorney Dickover replied maybe when it was built or when it was adopted. It doesn't meet current zoning.

Member Matise stated it could have been when it was changed to R5 in 1993 or later if we changed the requirements.

Attorney Dickover stated that if the Zoning code changed and made his building non-conforming there might be an argument that the applicant could make that the hardship is not self-created. The timing of that is something you certainly might want to know in your analysis of this. Under that section you are reviewing this under the applicant feels otherwise but you are reviewing it as a special variance that is allowed to this Board for non-conforming buildings. If you are going to review it you would use the use variance criteria.

Member Matise stated that if it is non-conforming it goes to a use variance. Is his use considered a legal use?

Attorney Dickover replied that the use is legal. You have non-conformity in 3 different aspects: the lot itself might be too small so it might not be big enough so lots can be non-conforming; buildings can be non-conforming because they don't have the appropriate set back front, side, rear; and the use can be

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non-conforming let's say it was a laundry mat instead of a residence which is not permitted in the zone but if it was there prior to the enactment of the zoning ordinance it would be a non-conforming use. You get it in 3 different fashions and they are treated sometimes your language gets very confusing as to what you are talking about. Here we are dealing with a non-conforming building. The use and lot are legal it is the building in this instance. You are allowed by this special variance language in your code to deal with variances for non-conforming buildings because your code says you can't enlarge a non-conforming building. You can do under your code what he wants to do, you can not expand this non-conforming building. He wishes to do that but your code allows you to examine that and you get back to the 50% cost of construction issues and to what extend you can increase this.

Member Matise asked what that is supposed to do, to regulate the size of the non-conforming size/increase.

Attorney Dickover corrected that it is to regulate the non-confirming buildings. Otherwise he could not do what he wants to do; your code prohibits it as you can not enlarge a non-conforming building.

Member Matise confirmed that is section 305-54. Is that in conformity with the state code?

Attorney Dickover replied there is no similar provision in NYS law. It is a special law in the Village of Walden. Other municipalities have similar laws but not all of them.

Member Matise stated she is real concerned about the 50% thing. Is that something the Board can override because this 50% thing she knows that Jessica came up with something, she doesn't know how you came up with it, but she queried a number of banks and insurance agencies who might be in the know but they can't tell you how to figure out 18 years ago what the cost might have been.

Member Metzger replied that there absolutely is. She went into her Exactware software where she can enter all the data will tell you the cost per year. She uses software in her business to do this and it would tell you what the exact cost on that given day would tell you exactly what the replacement cost would be with the area index and the inflation factor per year. 100% it can be done by any insurance company or an appraiser can do it. It is not something difficult to obtain. The applicant can go to his own insurance company and ask for it and they will simply call your underwriting department to supply that to you. It may take 7-10 business days but you will have it. He is within the 50%. A solid brick home, market value and replacement value are 2 completely different things. They are subject to depending on market value they could buy a small 900 sq. foot home on 100 acre lot and we are only insuring him for \$100,000 because we can only insure land for liability. You take a home built of solid brick on a lot the size that the applicant has and we have to say he purchased it for this amount but if that goes down to the ground or if something were to happen to it the replacement cost she believes is \$450,000.

Member Matise replied that they are saying from 2000.

Member Metzger stated that any appraisal software allows you to go back and plug in a date and find out, it is very simple. We couldn't do that 20-30 years ago but we can now because the index factor and the inflation factors are there and they are available. So if we do want to see that the applicant has the ability to provide that to us.

Member Matise replied that we have to see it; it is part of the law. 305-54 requires it.

Attorney Dickover confirmed that the applicant does have to show that.

Member Metzger stated we have nothing from the applicant showing that so does this Board want to request that.

Mr. Hagele replied that we should just adjourn until next month then.

Member Metzger stated that is something we should have asked for last month in addition to the contractor's estimate.

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Mr. Hagele stated that you did request it but he was hoping to convince you this was an area variance but this is obviously heading towards sending us to the Planning Board.

Member Matisse replied we don't know that yet we are still gathering information to try to make a determination.

Attorney Dickover replied you do know that as this section of the law that you are reviewing it under requires that. If you are going to treat this is some other fashion. He thinks the applicant would like you treat this as an interpretation of the letter provided by the Building Inspector, not that he is trying to put words into his letter.

Mr. Hagele replied yes and by your letter too because he believes this is up to the Board to decide if this is really a 305-54 or is it an area variance.

Member Scieurca asked the attorney if we should treat this as a 305-54.

Attorney Dickover replied yes.

Member Scieurca replied that unfortunately her opinion yes he has through the 305-54 criteria and go to the Planning Board.

Mr. Hagele replied ok. Then he would suggest we adjourn until next month.

Chairwoman Pearson stated she doesn't have a problem with that. She thought we had asked for the estimates.

Mr. Hagele replied you did, he apologizes for that. There is no way he going to get this done this year anyway. Thank you.

Member Matisse made a motion to adjourn the public hearing for 25 Valley Avenue, Use Variance. Seconded by Member Scieurca. All ayes. Motion carried.

B. FORMAL APPLICATIONS:

B.1 101 Wait Street, Area Variance

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. He did change for the sight distance, thank you for doing that.

c. Is the requested area variance substantial?

Chairwoman Person spoke for all by answering no.

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 not really.

Attorney Dickover explained that he is here for a variance and you guys make the decision but the applicant is requesting this because he wants to make the change so it is self-created. It is not fatal to an

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area variance application, it would be to a use variance application. He is applying for this variance not because he needs to do this change it is because he wants it. That is your determination not his.

Chairwoman Pearson stated we had discussed other places to put it and do it as well. The only thing we didn't talk about was size of the unit and making it smaller.

Member Scieurca stated she is fine and doesn't see a hardship that he is trying to cure. He wants a variance that's it, no hardship to cure and none created.

Attorney Dickover replied that when the applicant presented this application he said he had expanded the attic and turned it into living space so he no longer has any storage space. So now he wants storage space so he is asking for a proposed garage to replace the storage space that he lost. That is the hardship he is claiming that he has no storage space. Whether the Board feels that is a hardship or not, is it self-created, yes he is the one who closed in the attic but again that is not fatal to an area variance application.

Chairwoman Pearson stated that we can change it that it is a self-created hardship but she does not feel personally that it is going to be an issue for this application.

Member Metzger added that she believed the code enforcement officer has had issues with some of the items in the yard so it is actually going to be more appealing for the garage to be present so that the items in the yard will now be out of sight. She feels it will be advantageous to the neighborhood for the garage to be put in place. Doesn't think it was so much the storage from the attic space.

Mr. Gida explained it was more from the garage that he got rid of. When he did the expansion upstairs he expanded the living room down stairs and got rid of the attached indoor garage which was built into the house and was kind of strange. It was more like they built it on a whim as you couldn't even fit a car in it. He figured use that space for more livable space and put up a garage.

Member Metzger stated that in her opinion it is going to give the appearance and beautify it.

Member Matise added it will take clutter out of the yard.

Member Matise made a motion to approve the 101 Wait Street, Area Variance as requested. Seconded by Member Scieurca.

Roll call vote:	Chairwoman:	Rebecca Pearson	Yes
	Members:	Christine Scieurca	Yes
		Gregory Raymondo	Absent
		Mary Ellen Matise	Yes
		Jessica Metzger	Yes
	Alternate:	Michael Ciardullo	Absent
			All Ayes. Motion Carried

Mr. Gida thanked the Board for their time and consideration.

B.2 25 Valley Avenue, Use Variance
Adjourned

C. DISCUSSION ITEMS:

Chairwoman Pearson stated that there are Board of Trustee members here because they could possibly bring this before the Board for code revisions. Do you feel that in a residential district this law should still apply or could they maybe revise it so it is in a business district not residential?

Attorney Dickover stated there is something to be said for exempting one and two family homes that might benefit from. One and two family residential construction is exempt from site plan approval. The analogy would be a variance granted from this particular section would also be exempt from site plan approval. He would need to think it through but you are impacting the neighbors when you build or

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expand the size of a non-conforming structure they are going to be the ones adversely affected by it perhaps, not in this instance maybe. But otherwise they have the chance to come in before you and have their opinion voiced on it as long as you have a full proposed drawing of the lot and construction, he is not sure that we have that here yet.

Member Matise replied we do, just some of the measurements were missing but he gave it to us when we queried him. He did all of this but he didn't bring in the estimate.

Attorney Dickover continued that as long as the neighbors see the proposal and have a chance to be heard by this Board upon review of this application you could make an argument to exempt one and two family residential dwellings and that requirement.

Chairwoman Pearson asked if we could do that anyway. We can't because the Board would have to change the law.

Member Metzger asked if we would request a law change for an application that is in front of us.

Member Matise replied no, but if he holds off for 6 months until they change the law just like Niko did with the Capron house he can. Niko can make 3 apartments there; he is working on it and it going to be great.

Member Metzger thinks a lot of these cases need to go back before the Planning Board. They are coming before us for us to grant them approval to do work they are seeking to do she doesn't think that the Planning Board should be circumvented in her opinion.

Building Inspector Stickles asked on the application in front of you now, what would the Planning Board review.

Member Metzger replied they are going to look at set backs.

Building Inspector Stickles replied set backs are your job.

Member Matise added that construction standards is Dean.

Member Scieurca replied that they would look to make sure the character is the ok.

Attorney Dickover replied they will look at site plan elements; driveways, access, lighting, and parking, that would probably be it.

Member Matise thought there could be stipulations that this Board could attach to an approval so why would they have to go to the Planning Board.

Attorney Dickover replied yes you could. The people that answer these heady questions would say that the Planning Board has more expertise in the review of site plan elements than this Board does.

Member Matise stated she could see a large project but this is not.

Attorney Dickover reiterated that the argument could be made to exempt one and two family homes as long as you get a full site plan to examine and impose reasonable conditions on the application.

Chairwoman Pearson stated that part of the concern is, and she know you are talking about changing laws, but when we come into issues like that and have a Board that is receptive to changing it and possibly making it better for everyone the public and the Boards then that is a good thing. That doesn't mean they are going to change it, they still have to go through the process but we shouldn't hold off because we are talking to the Board members.

Member Metzger feels that streamlining the process makes more sense absolutely and the way the process works now it is not as streamlined as it should however we can't pick and choose. She thinks that we asked our attorney what we should be following and he advised us so that is what we should be following with the application that is in front of us.

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Chairwoman Pearson replied she is not disagreeing.

Member Matise wondered what project Kevin was talking about.

Chairwoman Pearson said you would have to go back to the minutes like a year before that.

Attorney Dickover stated that if someone is going to bring this back to the Board and suggest a change on this that they also consider a change that the criteria is under the area variance criteria not use variance. Under the use variance remember that self-created hardship is fatal in the review of use criteria. They gave you an avenue that you can get a variance but in the review criteria they make it impossible. Maybe in 2000 self-created hardship was still fatal to a use variance.

Chairwoman Pearson stated that you are talking about one and two family homes not mixed use or businesses.

Member Metzger said that is the deal breaker for most applications.

Attorney Dickover replied that all use variances that is fatal. In an area variance it is a factor to be considered but is not fatal to the application.

Member Metzger commented that some folks will be able to come up with the replacement cost on their homes on a given date. The software her company uses goes by zip code and street and is very specific.

D. INFORMATION ITEMS:

Chairwoman Pearson stated she got an email today about SEQRA training in Newburgh.

Clerk Bliss stated she would send it out tomorrow.

E. CORRESPONDENCE: None

3. COMMUNICATIONS: None

4. EXECUTIVE SESSION: None

MEETING ADJOURNED: 8:15pm

RESPECTFULLY SUBMITTED
Tara Bliss, Zoning Board Secretary