

Village of Walden
Zoning Board of Appeals Meeting
September 6, 2018

Chairwoman:	Rebecca Pearson	Present
Members:	Christine Scieurca	Present
	Gregory Raymondo	Present
	Mary Ellen Matisse	Present
	Jessica Metzger	Present
Alternate Members:	Michael Ciardullo	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 Scieurca made a motion to approve the August 2, 2018 minutes. Seconded by Member Matisse. All ayes. Motion carried.

2. BOARD BUSINESS

Chairwoman Pearson read's a letter from the Mr. Hagele about his application.

Member Matisse made a motion to hold open the public hearing for 25 Valley Avenue until October 4, 2018. Seconded by Member Scieurca. All ayes. Motion carried.

A. PUBLIC HEARINGS:

77 East Main Street

Chad Fowler, Stewart's Shop's, 77 East Main St, submitted his mailings to the Board.

Member Matisse counted and verified 19 were sent out, 10 green cards came back, 1 return to sender.

Mr. Fowler said he is requesting relief for setback for proposed canopy. Our gas tanks were installed 20 years ago and were made of steel. Current technology is to use double wall fiberglass underground tanks. The original pumps and tanks along with the canopy are warranted for 30 years, but 20 years is our comfort level. We remodeled the interior of the store a couple years ago and the store was in good shape. The gas canopy is also 20 years old. It's in okay shape now but if we're going to replace the tanks with double wall fiberglass, it's going to last 30 years at least, the canopy won't last 30 years so would like to replace at the same time. We currently have a 24 x 30 foot canopy and we would like to replace it with the same size, and height. There is only a one foot difference in setback from the property line now, than when we built it in 1998, but the setbacks are different now and require a 50 foot set back from the property line. We're are currently have a 29 foot setback from the property line, and we are seeking 21 foot of relief from that setback requirement. We have looked at other places on the lot, but the size of lot and flow of traffic leaves this the only place to put the canopy. Only difference would be, the 2 columns would be spread out more, so one car wouldn't block both pumps.

Member Scieurca likes the idea of the pumps further apart, but is concerned if it's going to cause an issue with people entering and exiting.

Member Raymondo added that the only reason that they're here is because the setback rule has changed.

Mr. Fowler said he'll do other things with the Planning Board, gas tanks, paving, new signs. Tonight he's here for the canopy. Don't want to wait to have a problem. Will stay up with the latest technology.

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Lynn Thompson, 34 Riverview St, asked if the Planning Board communicated if they're in favor of him proceeding.

Chairwoman Pearson said that they went to the Planning Board and were directed to come here because of the non-conforming canopy.

Member Matisse added that in terms of the Planning Board, it's a special exception use. It's now 50 feet because it's a major road. Otherwise it would be 15 feet, if your access was from Elm St. She questioned if they're replacing the same exact size canopy, in the same exact location with an increase of setback of a foot. Wouldn't they be grandfathered in? The section 305-6, they becoming non-conforming, once they replace the structure that's there. They come to us for an area variance. Concerned that once we give them an area variance, it's attached to the property forever. Spoke with Attorney Dickover and he gave some suggestions to put conditions on it if approved that would only apply to this canopy and not future structures.

Attorney Dickover said that it's within the purview of the Zoning Board to impose conditions upon approvals that must be reasonably related to the application. This variance is particular to the proposed canopy and once this canopy ceases to exist, the variance will expire.

Chairwoman Pearson thinks it's a good idea.

Mike Ciardullo, 83 Walnut St, asked if this scenario happens, would they be in the same position that this gentleman is now, replacing something old with something new and it's non-conforming. Whoever buys that property would have to come back and ask for a variance.

Member Matisse said that if we give them an area variance without a restriction, it stays with the property forever. No matter who buys that parcel and puts something on the 29 foot mark.

Mr. Ciardullo asked why it doesn't exist right now.

Member Matisse said because he doesn't have a variance and is non-conforming.

Mr. Ciardullo questioned what he had 20 years ago was in compliance with the setback, but today it's not.

Member Matisse replied, correct. Which is why they sent him here. Otherwise, the Planning Board could have finished their procedure without us.

Nesan Lok, 81 East Main Street wanted to confirm that it's only the canopy.

Chairwoman Pearson said that's correct.

Attorney Dickover asked Mr. Fowler to explain why there was nowhere else to put the tanks.

Mr. Fowler explained that they are 21 feet from one direction and 30 feet from the other. But if he were to move it farther from 52, it would effect the circulation around the canopy in regards to the parking, truck deliveries. That's why it's in the best spot between the 2 entrances and far away from the back lot.

Member Matisse asked that if in the interim, the canopy is damaged, would he ask to enlarge the canopy itself.

Mr. Fowler said that if he could enlarge it now and have room for cars to flow, he would. Pumps in line with each other the way they are today are not efficient. In parallel they would be much better. If he could do that here he definitely would, but don't have the room to do it.

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Member Matise questioned that going forward he feels the canopy would never increase in size.

Mr. Fowler said that if he could change it, he would change it with this application.

Attorney Dickover asked him to describe the current character of the neighborhood.

Mr. Fowler said that it's a mix of residential and commercial. Stewart's side of Route 52 is mostly commercial and the other side is mostly residential.

Attorney Dickover asked if there would be any detriment to nearby properties if the variance is granted.

Mr. Fowler answered no because the canopy is so similar to the existing canopy.

Attorney Dickover asked if there was any other way for him to achieve his goal other than getting this variance.

Mr. Fowler replied that there is no other way to replace the canopy and make it last as long as he'd like it to.

Attorney Dickover asked if that's because the canopy wouldn't cover the island sufficiently to meet the commercial purposes.

Mr. Fowler said the canopy is a standard in the industry, this is probably the smallest, 24x30.

Attorney Dickover asked about the sprinkler for fire suppression.

Mr. Fowler said that it is no longer a building code requirement. There are other safety features, such as a push to stop power button and fire extinguishers.

Attorney Dickover asked if the variance is granted, would it have any adverse effect or impact on the physical environment of the neighborhood.

Mr. Fowler replied no because it's so similar to the existing.

Member Matise asked if he was changing the lighting.

Mr. Fowler said that they upgraded the lighting with the last remodel they did.

Chairwoman Pearson said that they did get the OC Planning Departments response, and it is left to local determination.

Member Matise made a motion to declare the Zoning Board as a lead agency for SEQUA, and that it is an unlisted action. Seconded by Member Raymondo. All ayes. Motion carried.

Attorney Dickover stated that it is a Type 1 Action, and the Board reviews the Short Form EAF that has been submitted by the applicant. Project is to removed and replace the existing 24x30 gas canopy in the same location, reducing the front yard setback from 50'-0" to the requested 29'-0".

Attorney Dickover reviews parts 1 and 2 of the short form EAF.

Member Raymondo made a motion on the Negative Declaration. Seconded by Member Matise. All ayes. Motion carried.

B. FORMAL APPLICATIONS:

B.1 77 East Main 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.

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 no.

Member Matise made a motion to approve the 77 East Main Street, Area Variance with restriction as requested. Seconded by Member Scieurca. All Ayes. Motion Carried

C. DISCUSSION ITEMS:

Chairwoman Pearson wanted to discuss the 305.54(D)2. Went to the Village Board and isn't sure if Dave Donovan spoke to Attorney Dickover on the wording on the law on changing the law to make it simple for the homeowners because it was a business district and is now a single family.

Member Matise added that first it was Valley Avenue with businesses and residences mixed in. It was business district, D3 and in 1993 they made it R5, a residential district. At which point the residential use became non-conformant because the structure didn't meet the setbacks of the lot line.

Building Inspector Stickles said that the use of the land is legal. It's the land and the lot and how the house is configured.

Attorney Dickover added that his recollection is the house is a residential home, in a residential use of district. Its use is legal. The lot itself and the building that's on it is non-conforming because the current house is too close to the side yard. They want to expand that building for which they would need a variance but have a code provision that says non-conforming buildings cannot be replaced or expanded more than 50% unless the cost of reconstruction is less than 50% of the replacement cost. He did speak to Dave Donovan and he's writing a letter to the Village Board with his recommendation for some modification.

Chairwoman Pearson brought this to the board to make sure they knew what was happening. Had 2 board members that really wanted to pursue because they saw the struggle the homeowner was going through and to make it easier on single family homes.

Attorney Dickover said with respect to the people who drafted the current ordinance, it's confusing. Dave Donovan is suggesting what can be done for this one particular application but it doesn't fix the language of the ordinance. Deal with the non-conforming building, use, lot separately. They're under the use variance criteria. Which means you're never going to get the relief that they're asking for. Use variances are difficult to come by. If you want to vary a size of a building or a lot that are non-conforming, the criteria

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probably should be area variance criteria. Suggestions ultimately, get rid of it. You have state law that addresses it. Why complicate the issue with local legislation.

Member Matisse says that it seems they were addressing commercial uses more than residential uses. They were trying to restrict their expansion. They wanted to get people to comply with going to the Planning Board. Kevin Dowd designed this law to do, get them to the Planning Board.

Member Metzger added that that's because people were circumventing the Planning Board and they were coming here.

Attorney Dickover said if you grant a variance, they have to go to the Planning Board. You can send them there as a condition of approval.

Chairwoman Pearson added that also had to do with a lot of commercial uses.

Member Metzger asked the board what they think the struggle is. The gentleman and his family came before us, we was asked to bring 2 documents. He did not provide us with the 2 documents that we requested, but he spent an enormous amount of time preparing a letter that requested us to ignore a law, follow another law and not listen to our attorney.

Attorney Dickover said that this has been taken off the agenda and doesn't think it's fair to the applicant to have a conversation about it.

Chairwoman Pearson said she doesn't think it needs to be this issue. It's the issue with the law. Not the issue of the applicant.

Member Metzger added that the issue is being sent to the board because of this particular applicant. She struggles with anyone, comes before this board and the board respectfully asks them for documentation and they come to the next meeting with one of the documents that was printed out that same day, signed by the applicant themselves and they don't provide you with the other document that you asked them for. She doesn't feel that, as a board, should be bending over backwards for one case. Is the law flawed? Absolutely agree and understand why it was made. There were a lot of applicants circumventing the Planning Board.

Member Matisse said that this is the second zoning code that we have come across that's not working in general.

Member Scieurca said that she understands on the applicant but how do we know unless we go through every single zoning law, which ones are not working. Because an applicant came to us, we realized that this law is not going to work if we get another applicant. She doesn't like feeling like she's being spoken down to by an applicant either. 2 board members came here and saw what happened.

Chairwoman Pearson added that she spoke to the Mayor and she said to bring it back to the zoning board.

Member Metzger asked if any applicant that comes before our board, if they're not providing us with the documents that we are asking for. They don't spend the time getting the requested documents but they spend the time to ask us to circumvent something and go to another avenue. We can't even look at the documents and make a decision, what is the struggle to the applicant if they can't even provide us with what we're asking for to even entertain a decision.

Member Scieurca said that we couldn't entertain or make a decision based on the way the law is set right now anyway. So whether or not the document was provided, because there was no way getting around being sent back to the Planning Board.

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Member Matise added that that's why we sent him away. He didn't provide all the documents.

Member Metzger wanted to go on the record of saying that she agrees the law itself is so convoluted and doesn't make sense. As a board, when we ask for something, it should be presented to us. When said documents are in front of us and we have everything that we need, we can say that this doesn't make sense, we can't help you under this law. But you have to give the board what they're asking.

Chairwoman Pearson mentioned that he basically knows that he isn't going to get what he's asking for. Us being proactive with the Village Board and possibly changing things better for the community itself, not just his application. When that happens, it's frustrating when you want to do what we could do, but we couldn't do anything. Can something change to make it a better place for the community? That's what we're trying to do.

Member Matise said that she had a discussion with the Planner at the OC Planning Dept, coming across different parts of the zoning code that aren't working. She said the zoning board will end up identifying these laws quicker than the Village Board because you are dealing with the code. That's our role, to make identification and to make recommendation to the Village Board.

Member Metzger asked Attorney Dickover when an applicant applies for a variance under a certain law or code, can they apply for a variance under several laws and codes or they applying under 1 code.

Attorney Dickover said that we only have one code. There are different provisions of the code.

Member Metzger added that there are 2 separate issues. Understands that the code itself needs review. Also looking at it from the point of view, as any applicant comes before this board and we are trying to help them, we request of them 2 forms of documentation and an applicant comes in with 1 form printed out the day of the meeting, not even signed by the contractor that it was sent by and doesn't obtain the other document.

Member Matise said we did the same thing with the garage and he came back with a different plan, more information. He didn't get what he wanted right away.

Mr. Ciardullo mentioned that some applicants that come here have to go to the Planning Board and some don't. What is the criteria that makes the difference whether they do or don't?

Attorney Dickover replied that the code sets it up.

Mr. Ciardullo asked if this board can decide at any time that they want them to go to the Planning Board.

Attorney Dickover said that they could.

Chairwoman Pearson said that the Village Board is probably going to do something anyway, they have sat here and saw the struggles of what was happening. The only time you see those struggles is when the applicant comes before us. We can review all the laws and not really understand how it will impact the community until it happens. Excited to have a board that would be willing to listen to what we need to change. It's nice to have board members sit with us to see what's going on. We should have more joint board meetings.

Member Metzger questioned if someone comes before us, it's because they have been declined. So if they're application is not declined, do they go before the Planning Board?

Member Matise said if it's a single family home, Dean would just give them permits.

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Member Metzger asked if it depended on the size and scope of what they're doing.

Building Inspector Stickles said that if they can't meet setbacks, they have to come here. 1 or 2 family homes do not need to go to the Planning Board. No matter what.

Chairwoman Pearson feels that this mixture in the law is more designated for business and commercial use and all of a sudden there's single family home there and it never got addressed at that time and is stuck in a non-conforming use that is basically for business and commercial.

Member Metzger added that she doesn't object to law. She objects to an applicant not providing our board with what we request.

Attorney Dickover said that this board can ask an applicant for some information and it's not forthcoming, they have the right to close the public hearing, close the presentation and make a resolution to deny the application for failure to provide the information. This board is much more accommodating than any other zoning board

D. **INFORMATION ITEMS:** None

E. **CORRESPONDENCE:** None

3. **COMMUNICATIONS:** None

4. **EXECUTIVE SESSION:** None

MEETING ADJOURNED: 8:22pm

RESPECTFULLY SUBMITTED
Marisa Kraus, Zoning Board Secretary