

Village of Walden  
Zoning Board of Appeals Meeting  
July 22, 2020

Chairwoman:	Rebecca Pearson	Present
Members:	Christine Scieurca	Present
	Gregory Raymondo	Present
	Mary Ellen Matise	Present
	Brenda Adams	Present
Alternate Members:		
Building Inspector:	Dean Stickles	Absent
Village Attorney:	Robert Dickover	Present
Secretary:	Marisa Kraus	Present

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Chairwoman Pearson - Called the Zoning Board meeting to order at 6:00pm with the Pledge of Allegiance.

**1. APPROVAL OF MINUTES:**

May 27, 2020 Minutes

**Member Adams:** Page 9, it says "it would be across the street and the requirement "is" on your own property".

Member Adams made a motion to approve May 27, 2020 Minutes with correction. Seconded by Member Scieurca. All ayes. Motion carried.

June 24, 2020 Minutes

**Member Adams:** Page 1, under Chairwoman Pearson, it's not Mr. Puller, its Mr. Palmer.

Member Scieurca made a motion to approve June 24, 2020 Minutes with correction. Seconded by Member Matise. All ayes. Motion carried.

**2. BOARD BUSINESS**

**A. PUBLIC HEARINGS:**

**A.1 150 East Main St. Use Variance, Continuance**

Member Scieurca made a motion to continue the public hearing. Seconded by Member Adams. All ayes. Motion carried.

**Member Matise:** Shouldn't the property owner be the one asking for the variance?

**Attorney Dickover:** There should be an owner's endorsement as part of the file that gives him the authority.

**Member Adams:** There's a proxy that Jill signed, but she didn't say who she authorized. She left that blank.

**Chairwoman Pearson:** The whole bottom of that page is empty.

**Attorney Dickover:** We'll ask Dean to fix that and fill it in. I don't think it's a problem for continuing. Mr. Singh has been with us for 3 months now.

**Mr. Singh:** We are trying to make a small convenience store. It's going to have groceries and beverages, coolers, beer, tobacco products. It's a simple convenience store. Nothing complicated. There was something over there commercial, but when I talked to Dean, he said that it has to go through the Zoning Board and we have to change something on it.

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**Chairwoman Pearson:** How many employees do you think you'll have?

**Mr. Singh:** Probably going to have 2 employees. It's not going to be open 24 hours. We only open from probably 5-6am until 9-10:00pm.

**Chairwoman Pearson:** How about lighting and signage? I just want to get a feel for what you're thinking of the building and for residents that live nearby.

**Mr. Singh:** Signage is going to be plastic letters. I have a sample in my car that I can show you.

**Chairwoman Pearson:** That's for the Planning Board. I was just curious if it's going to be lit or parking with lights.

**Mr. Singh:** We're just going to need some lights for the parking lot, because in the winter it's going to be dark. We are going to need some signage in the windows and maybe couple of those neon signs which will say open or we have beer or something like that.

**Member Adams:** How many parking spaces do you anticipate being on the property?

**Mr. Singh:** We could have 6 parking spaces. I think we can go on the left side of the building. There is some parking space and maybe if we market right, I think we can make 6 over there.

**Chairwoman Pearson:** Do you know if there is an in ground oil tank?

**Mr. Singh:** I don't think so. I do remember I ordered the oil for that place \*inaudible\* I think it behind the building.

**Chairwoman Pearson:** Are you planning on parking behind the building as well?

**Mr. Singh:** No, just the left side. Behind the building is just grass.

**Chairwoman Pearson:** Is there going to be paved parking lot or are you just going to leave the like a gravel or something?

**Mr. Singh:** It's already paved. Just needs to be marked with the lines.

**Member Matise:** What about deliveries? Where will the deliveries be made?

**Mr. Singh:** The deliveries are probably going to be in the front door. They can just park in our parking lot and bring it through the front door.

**Member Matise:** That includes big beer trucks and other types of trucks bringing you to food commodities?

**Mr. Singh:** They're going to be big trucks. I'm in this business for like 10-11 years now. I have a few stores, but it's not going to be like a \*inaudible\* store, it's just going to be an okay store. It's not a heavy traffic that's going to be going all the time.

**Chairwoman Pearson:** Will you be taking up the street to do unloading or how will that work?

**Mr. Singh:** It's easier for the side street we have the service road right next to 52. They can park over there. It's easier, but if it's too much, they can park in my parking lot.

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**Member Scieurca:** That's where I think a lot of the issue is going come in. Trying to use that service road. I know it's a public service road, but I think that you're going to get a lot of resistance from the people who live off of that road.

**Mr. Singh:** We can make it mandatory that whatever deliveries we get, they have to go in the parking lot. It's a once a week delivery, so it's not like they're coming in all the time. We have 1 distributor who provides most of the stuff. They have groceries, cigarettes, soda. It's the company's name is Coremark. The beer companies are different. They are Manhattan Beer and \*inaudible\* Distribution. 2 beer companies. They is going to be a little bit more companies, but they don't bring in a truck or anything.

**Chairwoman Pearson:** There are no tractor trailers coming in there?

**Mr. Singh:** Nobody has a tractor trailers.

**Member Adams:** I'm trying to find the hardship here, because Mr. Singh doesn't own this property. So, he would be leasing it. He really doesn't have a personal hardship that is part of the requirements that we need to jump to.

**Chairwoman Pearson:** Correct. I guess there is a proxy for me to do that, but the owner would have to tell me why she needs to have this change. Has she tried to rent it out to other places? Other ways? That means the hardship.

**Attorney Dickover:** Certainly the applicant could make the owners case if he had the information necessary to show the dollars and cents proof necessary. I suspect he does not. If he does, he certainly should say so and put that in front of the board. But the proof necessary is that it needs to be made that the use of the property under all of the permitted uses within the zoning district cannot return a reasonable financial return. That's a claim that needs to be made by the owner. Again, the applicant could make the case, so he would have to be pleading that the owners prove rather than his own.

**Chairwoman Pearson:** Correct. I think that does need to happen because that's part of our process for a hardship. And I can't say that we need to hear dollars and cents from Mr. Singh. The owner of the property needs to also maybe give you information of why there's a hardship for her to change her use of this building, whether she's tried to rent it out, how many real estate people she's had to do it, her issues of why she can't rent it to someone under the correct zone. That's part of the issue.

**Member Matise:** What was the last use in there? They had the dry cleaner. They weren't doing any cleaning there. That was a pick up and laundry.

**Member Scieurca:** I don't know if we have the latitude to environmentally know if there were chemicals there, but I have to say that my main concern was the variance of any kind of use there is now our face to face driving with the commercial space right across the street. I don't know if that's something that the Zoning Board can consider also. How do you mitigate the traffic, because I think that's really dangerous. I even pulled into the parking lot and sometimes people just don't pay attention on the other side of the street.

**Chairwoman Pearson:** I do have some comments from people online as well. I agree with you, Christine. I think that the traffic in that area, just even with Dunkin Donuts and it's just a mess. Half the time there is trucks that park on the street and shouldn't be parked on the street. People can't look around it. I don't know why people haven't gotten like in major accidents. \*referring to online comments\* Mr. William Sestrom, he strongly objects. He says there are "5 convenience stores within a mile. We don't need another one. Enough trash on my lawn already. Customers leaving will be driving head on to Dunkin traffic. Parking will overflow to East Main Street. Unacceptable. I have photos of a buried tanks and Mr. Singh misrepresented that there are none. The property is in the flood zone. Please require a type 1

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SEQR to get traffic study and environmental study." And that's if we move further. He was one that also had some put some comments about why it should not be there.

**Attorney Dickover:** \*read Mr. Sestom's and William Palmer's email into the minutes\*

**Member Matise:** If in fact, a variance is given, does the applicant then go to the Planning Board?

**Attorney Dickover:** This application would require a site plan approval from the Planning Board, in fact, many of the issues that you've raised and members of the public have raised would be site plan issues for the Planning Board. You need to keep in mind what this application is for. This is an application for a use variance. Review of the 4 factors, you have a memorandum with respect to them. The applicant probably should be lead through those 4 factors.

**Member Matise:** I just wanted to add one more thing to this list, in case he goes to the Planning Board. To my recollection, the other convenience stores do not have ice machines and things outside out on their property. So, I think that if it ever gets to the Planning Board stage, that's something they need to look at carefully.

**Chairwoman Pearson:** \*read public comments from the June 24th hearing into minutes\* Number 1 cannot read. Why is a reasonable return substantial as shown? We need some financial evidence of why the owner of the building could not rent the building or be able to move forward with the use that it is now. Alleged hardship is unique and does not apply to a substantial portion of this neighborhood. She also had to show a hardship of why it has to change in this neighborhood. Variance will not alter the character of the neighborhood. She has to show how it will not alter the character of the neighborhood, which is residential. Alleged hardship has not been self-created. She has to be able to show \*inaudible\*

**Mr. Singh:** If we can't use it for a store or anything, what could this property be because the laundry thing was there. Obviously it's not there anymore so it didn't succeed. What else we can do with the property?

**Attorney Dickover:** You would have to refer to the Village of Walden zoning code to see what uses are permitted within the zoning district. This board doesn't have them in front of them this evening.

**Chairwoman Pearson:** On Facebook, Mr. Sestrom writes "neighbors Joseph and Alex Pereira also objected at the last meeting" They're neighbors to this building don't really want to have a convenience store there.

**Attorney Dickover:** You could close the hearing this evening if you think you have enough information to make a decision. If the applicant would like an opportunity to fill in the blanks, so to speak, you could make a motion to continue the hearing. That decision is for the board.

**Chairwoman Pearson:** Are you ready to make a decision this evening or would you like more information?

**Member Matise:** I think you have to get the information from the property owner.

**Chairwoman Pearson:** They had opportunity to give that to us. They can have attorneys and have them come and give that information to us. I think Dean goes through the criteria that's needed.

**Member Matise:** The property owners sign this proxy February 28, 2020. I guess the concern could be that, yes, the property owner has had plenty of time because now it's already July 22nd. The potential tenant signed and brought this to do the Building Inspector on March 21st. A considerable time has gone by. If you're comfortable with saying that the owner has had plenty of time to get the information to us, knowing what they had to get to us, then that's fine.

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**Member Scieurca:** You just told him tonight what you want to hear. I can't be closing it. I understand it's the owner's responsibility. You just told him tonight the 4 things that you want from him. I'm sure Dean does go through it. I don't know if this is his first application. I'm not ready to vote. I honestly think that he should have until next meeting.

**Member Adams:** I would agree with that to go to the next meeting. The information is in the application, though, the criteria that they have to meet. It was seen and it needs to be dealt with, because this is a huge request to go from a single family residential to a mini mart without a major hardship. If they can come back with the information, we can at least discuss it.

**Chairwoman Pearson:** Correct. And there was another building, that street in a residential neighborhood that was a business and was not allowed a use and they turned it back into a single family home and sold it very well. So, it's something that may possibly be a single family home again or make it a single family home. Also, Alexander Pereira is online, she says "this is a residential neighborhood, have small children, as well as other families on the street and object to this becoming a convenience store. We worry about increased traffic and pedestrian traffic." And especially on the thoroughfare that's there, the boulevard. So, the board members are agreeing to have him come back at the next meeting with any information that may be helpful to make a decision.

Member Scieurca made a motion to keep public hearing open until next meeting. Seconded by Member Matise. All ayes. Motion carried.

**Attorney Dickover:** Just for the record, can we acknowledge receipt of the proof of mailings as well as the publication. For SEQR purposes, we should note that this is going to be an unlisted type action. The Planning Board should put it as lead agency. I think you can do this on an uncoordinated basis. If granted, the Planning Board would be an involved agency. Their review of the environmental considerations would be perhaps even more extensive than yours or at least as extensive. So, if you resolve this evening to conduct an uncoordinated review, declare yourselves lead agency and type this as an unlisted action that would take care of our housekeeping on SEQR for this evening. If you're going to proceed with a decision on this matter, that might be favorable, we would then have to review the EAF that's been presented.

**Chairwoman Pearson:** Do we have to do the SEQR tonight?

**Attorney Dickover:** A motion that could be made adopted as follows, the Planning Board resolves to conduct an uncoordinated review, declare itself lead agency and type this action as an unlisted type action.

**Chairwoman Pearson:** Would this give the traffic study?

**Attorney Dickover:** No. It might. \*inaudible\* without the motion I just made being adopted and passed, we would never get to that.

Member Adams made a motion to adopt the Planning Board resolves to conduct an uncoordinated review, declare itself lead agency and type this action as an unlisted type action. Seconded by Member Matise. All ayes. Motion carried.

**Attorney Dickover:** The next meeting will be August 26th, but the continuation will be to the next meeting of the board because of the COVID environment, we don't really know whether or not the meetings are going to be held, whether they get adjourned, so this matter will be carried over to the next meeting of the board.

**Chairwoman Pearson:** \*referring to online\* Alexandra, if you check with the Village, they will be posted. We're assuming 26th, we're talking at 6 o'clock again, not sure we may be changing the time because

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that was something Rob is going to look at tonight or whether we could change time or not. Mike Felong "anti-business climate in reason why New York is losing businesses and residents." Lynn Thompson "I'm a bit confused about residential neighborhood. Dentist office, Doctors office and the building previous business location." In response to you, it is in a residential neighborhood. It is a residential building. The dentist's office was grandfathered in because it was a dentist office forever. But once they chose to not be a dentist office any longer, they sold the building and made it into a home. I don't see anybody else commenting.

**B. FORMAL APPLICATIONS:**

**B.1 126 North Montgomery St, Area Variance Continuation**

**Chairwoman Pearson:** Rob did send us 2 decisions, 1 for denying and 1 for granting. If it's accepted, there are conditions, can I read those into the minutes or should I read the whole thing, because we're not in public.

**Attorney Dickover:** You can. The introduction portion of these is the same. The application, the name of the applicant and what's being sought, it recites the history of the public hearing being open and close, publication notice having been made. It recites the law that's applicable here, which is Section 306 in the table dimensional uses. This is an application for setback less than the minimum of 15 feet. There's a set of findings of fact \*inaudible\* to the determination of the board. Don't know if the board members have seen these or not. I would suggest that a motion be made to either accept one or the other.

**Chairwoman Pearson:** I watched the Planning Board meeting and I'm concerned that now the driveway has to be 22 feet wide going into that property. Is that going to affect this building and the turnaround and parking?

**Zack Peters:** My understanding from the DOT's review, the main driveway that the DOT is referring to is the existing gravel drive. It's not the driveway that serves this dwelling. That's the one that they're concerned about improving.

**Chairwoman Pearson:** It has nothing to do with the house and the garage driveway.

**Zack Peters:** Correct. There's a letter that we would send to them for the second entrance because it's existing there. But the primary entrance they're concerned with is the one that would serve that proposed development if it goes in. That would also be the entrance for that house.

**Chairwoman Pearson:** I'm confused. There are 2 entrances. There's 1 entrance right now going up to Mrs. Sparks house and then you have the entrance that's at the blue house. That would be the maintenance shed. Is that what you're talking about, the accessory driveway?

**Zack Peters:** The accessory driveway for the blue house is proposed to remain the same. The one that DOT is concerned about is technically what serves the Sparks house now is even though it's a large, wide gravel road, basically that's a driveway. That's the one they're concerned about.

**Chairwoman Pearson:** There's another driveway for the project itself besides the driveway to Mrs. Sparks house.

**Zack Peters:** The driveway for Mrs. Sparks house, that entrance would stay. It would be 1 entrance that would come off the road and it would serve this development. For the sake of DOT, then it would also serve the Sparks resident. It would come in off the road with 1 entrance in the existence and it would split.

**Chairwoman Pearson:** I thought they were talking about the other the house with the garage that we're talking about that had to be wide and 22 feet.

**Zack Peters:** I don't believe that's the case.

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**Chairwoman Pearson:** Because if it was, then I'd have a concern about whether there's a turnaround and whether it's coming up and around behind that building. Whether it's going to make that turn behind the house and whether there's going to be additional parking behind there for the equipment and things or in that shed.

**Attorney Dickover:** I got to say that at the Planning Board meeting, I got the same impression that the DOT was concerned about the driveway for what Larry was then calling the office. Which I believe is the house which is next door to this garage. Did I get the wrong impression?

**Zack Peters:** I can follow up with him on that. Again, I was not at that that meeting. He's been heading that up with DOT, to the best of my knowledge. If that was the case and that entrance for the blue house had to be widened. I think that's going to change the whole setup. I don't think there's enough space there to widen that driveway.

**Chairwoman Pearson:** Unless they take down the bushes. I didn't know whether its 22 feet and it had to make a curve. The garage is there. I was concerned about that. Where the building is going to be, maybe it's better to take it down and move it if that 22 feet has to go behind there. Then they were talking about a 400 foot allowance or something. I was trying to follow, but I don't know whether I was in the right driveway or not.

**Zack Peters:** My understanding from what I've seen from DOT, at least going up until the Planning Board meeting, was that their comments were primarily related to the fact that they have a separation for driveways because normally they would want 1 driveway serving this parcel, but they're requesting a separate letter that would allow us to maintain the driveway for the blue house because it's already existing.

**Chairwoman Pearson:** I felt it was the driveway of the blue house. I didn't know what that would do to the building in the back. We have to be able to get into that. If that house is in the way, you need 22 feet behind the house and get in. Will that work? I don't know.

**Member Adams:** I'm just looking at the plan and if that was the case, there's only, according to what I'm reading here, 16 feet 4 inches between the property line and the house. So, if they were going to go with a 22 foot driveway there, that whole thing would have to come out.

**Chairwoman Pearson:** They talked about a radius at the end where you pull out of the driveway. Am I correct?

**Zack Peters:** Correct. DOT's standard entrance, comes out and there's a radius, depending on what the regulation is, typically about 33 feet on the radius.

**Chairwoman Pearson:** So that means the bushes wouldn't have to come down and the driver would be right up against the house. I don't know if I'm right or wrong.

**Zack Peters:** I just texted Larry to see if he can respond to me back on that.

**Chairwoman Pearson:** Because that would be a concern for me, for the building in the back if it stays there.

**Attorney Dickover:** Those are going to become site plan changes at the Planning Board \*inaudible\* whether or not there's appropriate room and distance for that. Your application here is a side yard setback. I'm not saying that your inquiry is wrong, but I'm not sure it focuses on the area variance that's in front of you. Let me just answer one of your other questions. You mentioned the 400 foot question. That

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question was directed at the main access driveway for the facility itself. It was not at this driveway. That's a street length requirement and this is a driveway serving the facility, not a Village street.

**Zack Peters:** Larry did just text me back and he said, they were. DOT is asking for some improvements at the entrance for the blue house, but that would only be within the DOT right away. Basically about 10 feet or so off the edge of the white line there. It wouldn't impact the house. The House wouldn't need to come down or anything like that. I'm sorry for the confusion, I wasn't aware of that before.

**Chairwoman Pearson:** If we start discussing that draft, can we add more things to that?

**Attorney Dickover:** Yes. \*read the findings\* 5 factors, 1. Undesirable change in the character of this neighborhood and potential for detriment to the neighbors in the neighborhood will not result if the requested variance is granted. The structure is currently used as a garage shed or a single little impact on the neighborhood and the use of the structure for maintenance of storage, as described by the applicant, will have no significant increase upon the neighborhood to need for the variance. 2. The applicant demonstrated a need for the garage to be used as a maintenance building accessory to the senior citizen complex. 3. Substantial nature of variance. The board determines the variance requested \*inaudible\* approximately 96 percent is not substantial from a practical point. 4. Adverse physical environmental effects. \*inaudible\* packed with physical environment because it already exists as shed/garage. Difficulty, the board determined that the need for the variance was not self-created since the structure already exists. The applicant simply wants to continue to use that garage albeit for a much larger principle use. That is an apartment building versus a single family residence. Employing the balancing tests, the board determines that the benefit to the applicant, if the variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood and would impose therefore the following conditions. 1. There should be no additions to, nor any enlargement or expansion of the size of the building. 2. Before the building can be used in or occupied, the applicant shall make the improvements which were described to the board, including new siding and new paint. 3. The building shall be used only as described by the applicant for the inside storage of no more than 1 pickup truck with plows/sander \*inaudible\* 1 snow blower and other assorted hand tools. 4. There should be no outdoor storage other than the parking of 1 vehicle at any particular time. 5. Structures should be used as an accessory structure to the proposed senior citizen complex and should not be rented to or for any other user. 6. The variance shall not run with the land, but shall exist and be a force in effect only for so long as the building isn't damaged beyond repair or shall not be rebuilt or reconstructed and its variance shall thereupon lapse and be of no further force. 7. The grant of the variance is not made in a vacuum, but is considered as a part of the overall senior citizen project and if that project fails to receive site plan approval, this variance shall be deemed null and void and of no further force or effect. 8. Violation of these conditions shall result in the immediate termination of variance, enforcement of which may be had by the Village Building Inspector, issuing a notice of violation, stop work order, suspension of any applicable \*inaudible\* certificate and applicable enforcement actions. That was the proposed decision granting the variance.

**Member Adams:** I think we've covered about everything there is to cover.

**Member Matise:** I just think that the setback should be dealt with at this point and not encumber the whole property with it.

Member Scieurca made a motion to grant the variance. Seconded by Member Raymondo.

Roll call:

**Member Raymondo:** Yes.

**Member Scieurca:** Yes.

**Member Adams:** Yes.

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**Member Matise:** No.

**Chairwoman Pearson:** This is hard for me because I really feel that the applicant said there was no hardship and I felt that it can move to another location. For me sitting here and doing my due diligence, that's what I would be doing. I think I'd vote differently if it was a new building going on that property. But it's an older building accessible there. I'm going to vote yes as well. So, you're going to move forward and it's accepted. Good luck with it.

**Zack Peters:** I want to thank all the board members for the time and effort in this and the review. We appreciate it.

**C. DISCUSSION ITEMS:**

**Chairwoman Pearson:** We did talk about the times for the meeting. Rob, you were going to see if our law said we could change it or not.

**Attorney Dickover:** You're right. I did not.

**Member Scieurca:** I would like at least for the next 2 months, maybe an extra half hour.

**Chairwoman Pearson:** I'm fine with that because I don't get out of work till 5:30 and I'm just getting settled is getting papers out. If 6:30 works for everybody. Rob, is that too late for you?

**Attorney Dickover:** No, it's perfectly fine with me, I prefer earlier. 6-6:30 is perfect.

**Member Scieurca:** I don't want to go much beyond that. An extra 30 minutes would be great.

**Member Raymondo:** Yes.

**Member Adams:** I'm good with 6:30. I also want to mention that 2 things. 1, I have to agree with you, Becky, because it was a very hard decision, but because the building was already there, is what made me lean. The other thing, Rob, I noticed that you still have Jessica's name on the resolution and you probably want to put mine.

**Attorney Dickover:** Sorry about that.

**Member Matise:** 6:30 is fine.

**Chairwoman Pearson:** We will change that for the next meeting. Maybe we will be back in the public by then.

**Attorney Dickover:** The current executive order runs through August 5th for remote meetings.

**Member Scieurca:** I do have one quick question, if I personally have to apply for a variance, I have to remove myself, right?

**Attorney Dickover:** Yes. You would have to recuse yourself. That would be a conflict of interest.

**D. INFORMATION ITEMS:** None

**E. CORRESPONDENCE:** None

**3. COMMUNICATIONS:** None

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4. **EXECUTIVE SESSION:** None

**MEETING ADJOURNED:** Member Raymondo made a motion to adjourn. Seconded by Member Matisse.  
All ayes. Motion carried.

RESPECTFULLY SUBMITTED  
Marisa Kraus, Zoning Board Secretary  
7:15pm