

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

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

Chairwoman Pearson - Called the Zoning Board meeting to order at 6:30pm with the Pledge of Allegiance.

Chairwoman Pearson introduced William Sestrom as the new Zoning Board Alternate.

1. APPROVAL OF MINUTES:

Member Adams made a motion to approve the October 28, 2020 minutes. Seconded by Member Raymondo. All ayes. Motion carried.

2. BOARD BUSINESS

A. PUBLIC HEARINGS:

A.1

B. FORMAL APPLICATIONS:

B.1 Orange County Transit, Interpretation

Anthony Mirando: Orange County Transit is the tenant of the existing Walden East property. *submitted a letter to the Board Members*. It's not something that I expect you to read tonight, but it's something that I wanted to provide for the record. Part of what's discussed in this in this letter, it's a supplement to the original appeal that I submitted back in November. When we filed an appeal for Orange County Transit, was when I first got involved in the project and there were some pending stop work order violation issues by the Building Dept. We filed the appeal largely at that time to just pause, get in because their statutory limitations on time. So, we filed that with the full intention of working with the Village to address the stop work order, along with the order of remedy, as well as a pending site plan application that Orange County Transit has before the Planning Board. The letter that we filed back in November was with a request to continue to adjourn these appearances while we continue to work closely with Village staff and Planning Board. In terms of what we've been working on, we've been before the Planning Board a number of times. We've made a fairly substantial submissions to them. We've been working closely with multiple agencies to gain information that was requested by the board to help move forward in a sewer and water action detail sheet to be included in the plan. We've appeared twice before the Planning Board to discuss with the hopes actually one day that we would have been able to move a little further at that meeting. But there were some comments that we're going to go back and address going forward. Which is truthfully why I hope to be able to even adjourn tonight so we can continue to move forward with the Planning Board. The pending violations and stop work order that was issued by the Building Department are essentially twofold. They are issued one for purposes of stating that we need Planning Board approvals for certain existing aspects of the site and 2, that some of those aspects require Building Permits. With that said, I have good news to report and that we do feel like we've ultimately addressed most of the violations and issues raised in the order or at least have been working towards addressing. What I mean by that is the order essentially says that Planning Board approval is required for existing office trailers that exist on a property and they're on the western side. There are two lots, it's in the middle of the western side lots and those office trailers have been there for a few years. They were there prior to the annexation that recently occurred on this property. And there was a building permit issued by the Town of Montgomery documenting that they were there prior to that point. That was in 2019. The point is, is not so

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

much that to get into whether or not that's covered by the annexation agreement or anything of that nature, it's really more about just confirming so we're all being honest that they have been there for a few years. Let me back up and give you some more context. Some of what I'm about to say is really part of what the violations that were issued, but I'll give you the context. Orange County Transit is before the Planning Board on a site plan application to enhance the site with improvements that involve improving parking and circulation and things of that nature. These for Orange County Transit have been there and the use was there prior to the annexation that occurred last year. I'm just getting to the violations and what the substance of those are. That's kind of what I'm trying to stay focused on what the actual stop work order involves.

Chairwoman Pearson: The annexation took place in February, when the documents were signed. Your letter states September. So, your violations came into play after the annexation took place. Why do you not feel like you have to abide by those rules?

Anthony Mirando: Which rules?

Chairwoman Pearson: We have a Building Inspector, anybody in this Village has to abide by those laws. I can't just put up a fence, I have to go get a permit and can't just do anything I want my yard. I can't do something in my house without a permit. So, why does this company feel he doesn't have to do anything by Village law if the annexation took place in February?

Anthony Mirando: For purposes of this evening, I don't really want to get into the annexation date because it's not really relevant here as we go forward. There is disagreement amongst people as the when the date was, but that's not for us to discuss tonight. I think that's being discussed with the Board of Trustees and the property owner.

Attorney Dickover: This is not an interpretation. This is for you to review the determination of the Building Inspectors issuance of stop work order and order to remedy. You're viewing his order. There's nothing here for you to interpret. You're not interpreting the zoning law, which is what you are empowered to interpret zoning law. The zoning code is not an issue in this. Your appeal is twofold. You're challenging the Building Inspectors issue to the stop work and an order to remedy. And that's simply reviewing the Building Inspector's issuance of those orders.

Anthony Mirando: And state local law requires us to come to you if we have any opportunity to question or challenge that. When we got involved, it wasn't that we were intending to come here and argue all of these issues with you. It's more like, let's pause and let's work really hard to resolve it. That's kind of where our attention has been. But just to get into the actual orders. Back to the point you made about the date of annexation, I'm not going to get into it. That's not necessarily relevant to what I'm about to say. The point is that it was an annexation. There is an annexation agreement and that's relevant because it brought the property into the Village under a certain zoning district. Things that were occurring on a property at that time and which were documented in the agreement and otherwise essentially were deemed to be permitted under zoning in the Village at the time. The site, as it stood, was considered to have, quote unquote, treated as site plan approval. That's just the language in the document. The point is that the violations that were issued, they went to the office trailer, they went to a bathroom trailer. And that was in respect to Planning Board approval. The second level that is, there were steps of the deck that's attached to the trailer and fence. Gates along 52 that were there. Those were deemed by Dean to say that we needed building permits. I can summarize rather quickly, the point is that the value of the existing office trailers were permitted to be here. They were used by Orange County Transit as office space and for break room space pursuant to when they were in town and then allowed to remain when they were in the Village. In our view, those are permitted as having site plan approval. When you have site plan approval, you can obtain a building permit. For the office trailer, for example, the applicant did file a building permit after meeting with the Village, after receiving the stop work order. The trailers themselves were permitted to be there, that was okay. Now, when they came into the Village, they were still allowed to remain for the use that they were existing prior. They didn't call for Planning Board approval.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Subsequently in September, there was a building permit application filed. It wasn't acted on or responded to at this point, but it was filed. Orange County Transit is now proposing as per their most recent site plan, to remove the trailers from the property altogether, upon completing the Planning Board process. It really becomes a moot point ultimately, because even though they were allowed to be there and they existed previously, we're taking them off.

Chairwoman Pearson: What is the time frame for that?

Anthony Mirando: When we complete the Planning Board process. There are tenants that have left the property in the last couple of months. Essentially a win and it alleviates this issue altogether. The bathroom trailer that was referenced was removed a couple months ago. Then as far as the deck that was attached to that, again, there is a pending building permit for that. And that again will be removed upon completing the site plan process. The fence is a separate issue. The fence was existing on the site previously. It's essentially the 2 entrance gates into the property off 52 and those gates were in bad shape so the applicant repaired them. Back in September, right after meeting with Dean and finding out about the violations, found the building permit for the fence, the gates as well.

Chairwoman Pearson: Are there any other violations now on the property?

Anthony Mirando: Not that I'm aware of. I think there's been discussion with the property owner about other aspects of the property, but I'm not aware of any violations.

Building Inspector Stickles: There is no more violation. But the 2 are now in limbo because he is now currently in front of the Planning Board. However, all of the things that led up to the violation and the stop work order were done without approval. That's why they were issued.

Attorney Dickover: I just want to get into the record of the building permit that was issued by the Town of Montgomery from the trailer.

Anthony Mirando: The point of that was not to say we have a Town of Montgomery building permit and it doesn't eliminate any jurisdiction. That's just more to document that there was something that was occurring before the annexation.

Chairwoman Pearson: The interpretation that I'm hearing is that we are talking about violations and how Dean approached the violations.

Attorney Dickover: Again, it's not an interpretation. You're reviewing the orders issued by the Building Inspector.

Chairwoman Pearson: In relationship to that instead of anything else happening, I feel that the annexation happening in February when both parties signed resolutions. Also, to go further than that, if they didn't sign those resolution, they went through the process of signing. Or one party signed them and one didn't, the annexation would go through anyway as of 90 days after they started the process. For me, the annexation is taking place when they first signed.

Member Scieurca: Here's my frame of reference, these violations that Dean issued stop work order for. If the property was still in the Town of Montgomery, would the Town of Montgomery Building Department have issued a stop work order based on the same issues? I don't know the zoning in the Town of Montgomery. Can't imagine it's much different that you would have to get a building permit to fix, build the fence that you have to get a building permit to put on the deck, even on existing trailer.

Attorney Dickover: There's been no issue put before you by this applicant that the Building Inspector did not have jurisdiction because of the annexation, the date of effectiveness. That's not the argument. Whether the Town of Montgomery would or would not have, I don't think is relevant to your analysis.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Chairwoman Pearson: Our relevance is did Dean do what he was supposed to do by issuing violations. Why we talk about the annexation is because in his letter, it states September that they think annexation took place, but I'm saying that is the date of the signing.

Attorney Dickover: My date would be January 7, 2020. The date on which the Village of Walden and the Town of Montgomery entered orders and voted on the annexation. The orders are subsequently filed but as of the date of their decision and findings was January 7th. The law requires that the orders be filed in the Clerk's office in both municipalities. But our interpretation of the annexation is that it was filed on January 7th.

Chairwoman Pearson: The question is, is whether Dean did what he was supposed to be doing.

Anthony Mirando: With respect to the date, again, I mentioned we don't agree with these dates, but not here to fight that tonight. The order was issued before our date of annexation as well. It was issued September 14th. I think the date was no sooner than September 17th. Yes, is there a question of the jurisdiction under that theory? Sure. But I hope and I think you can take from what we've said until tonight and tried to do with staff is we're not trying to revert to that argument. We're trying to work with him.

Chairwoman Pearson: You wrote this letter because you had problems with what was happening.

Anthony Mirando: I would be derelict of my duties if I didn't do that.

Member Matise: On the other hand, even Dean came along on September 14th and issued you a stop work order and issued all these objections and objections to the trailers. But the paper that you got from Schmidt says temporary trailers, August 8th, 2019 for one year. He was past that date.

Anthony Mirando: The applicant followed up with the Town of Montgomery. I believe this was acknowledged somewhere on the record, that the Village was aware that the applicant reached out to the Town, because, again, I'm not here to argue about the annexation process, but there was some confusion or lack of interest by the Town and they acknowledged the request that was being made to process, but they just stopped reviewing it. There was a gray area in terms of the Town following up with us or dealing with the Village.

Member Matise: Then the assumption is that the Town was also agreeing with the January date of annexation.

Anthony Mirando: I wouldn't agree to that. I can't speak for the town.

Member Adams: I'm not really sure where you want to go with this. You are disagreeing with the Building Inspector putting a stop order and then you turned around and got a building permit, so that's your way of acknowledging that you did need a building permit.

Anthony Mirando: The building permits were filed after meeting with Dean.

Member Adams: Dean writes the letter that he has issues with the deck and steps and that was the information he had as of the date he wrote that letter. If we had a date for annexation, whether you agree or not, that's not for us to determine. But the information that Dean has in September was based upon the fact that it was annexed and that you had not done building permits. When after that happened, you went in and got building permits for the decks, stairs, and fencing. To me, this is a dead issue because the fact that you went in and got a building permit means you agree.

Anthony Mirando: I think it was a cooperative effort on the Building Department side. I was trying to work with Dean and making sure that we were documenting the existing structures and the existing work.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Member Adams: Basically you're here to ask us to say that Dean was wrong in issuing this. When he was right, based on the dates and also based on the fact that you went on to get building permit, so you must have agreed to that point.

Member Matisse: When did you remove the trailers?

Anthony Mirando: No, we're proposing to remove the trailers. We've committed to it in our Planning Board application to have them removed.

Attorney Dickover: There are more than just these trailers here. There was also a bathroom trailer, which I understand has been removed from the site. So, when you hear that some trailers have been removed, that's true. But not the trailers that were the subject of this application.

Anthony Mirando: The bathroom is gone. The office trailers are proposed to be removed upon completing the Planning Board process.

Member Adams: Basically, Dean was right on September 14th when he wrote the letter. So, we can't say he was wrong on that date. That seems to be what you want us say.

Anthony Mirando: The point that I'm making is there are different parts of this order. With respect to the Planning Board aspect of it. I don't think that anything that that was suggested needs a Planning Board approval. That's irrespective of the other things going on. So, I don't think those are correct. The question of the fence and the decks. They were there prior to the annexation. It's not that we're saying we should have gotten a building permit from the Village of Walden, we're saying that they were there. They were deemed to be conforming approved under the agreement accepted by the Village. And then when Orange County Transit finally found out that was an issue, they filed it right away.

Member Matisse: Is that correct? The way I read it was that they added the deck.

Building Inspector Stickles: That's my view. I don't think the trailers were used prior to the annexation for Orange County Transit.

Anthony Mirando: They were used.

Member Matisse: Did they have decks and steps on them? Or were they added after January?

Anthony Mirando: I'd have to confirm that.

Member Matisse: The impression that I have is that Dean was given the impression that those decks and steps were added without permits.

Member Raymondo: You applied for the permit for the deck. Did you get approval?

Anthony Mirando: The application was filed, a permit wasn't issued.

Member Raymondo: Does the deck meet code?

Building Inspector Stickles: I don't know. I know there was no footing inspection done.

Member Raymondo: So, if it doesn't meet code, you have to remove it. Regardless if it was there before the annexation.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Building Inspector Stickles: I'm not going to tell you that it's unsafe because I haven't looked into that close.

Member Raymondo: But they have a building permit in front of you, so you can review the deck.

Building Inspector Stickles: I have not done that because I feel as Building Inspector, that before I issue a building permit, they need to have approval through the Planning Board. Which I could not find where they had gotten approval through the Town of Montgomery Planning Board to be there. If that was the fact that they already had approval, then it would have been a moot point and all they would have had to do is get a permit for the decks.

Member Raymondo: In that sense, you're right. But they're in front of the Planning Board now. So, we should let the Planning Board decide.

Chairwoman Pearson: We're talking a lot about the violations that Dean gave them was correct or not correct.

Anthony Mirando: I think there's just there's an opportunity to just explain to some of what I disagree with in that. Dean's discussion about whether or not that required Planning Board approval. Our position is that it didn't. It was included. The trailers were there prior. They were used for the same use and they were inventoried and identified. If you read the annexation agreement, it says all parcels are permitted to have Orange County Transit offices with accessory parking on the entire site. That building permit is not relevant to the purpose of the annexation agreement. Annexation agreement took the property into the Village under these terms.

Member Matise: But the terms for those trailers were for one year.

Anthony Mirando: No. In all due respect, you can't say at one point about what the Town says doesn't matter and at another point, say it's only for one year. Once it came into the Village, it was accepted under those terms.

Chairwoman Pearson: We don't even know if the steps were there.

Anthony Mirando: I would confirm. I would follow up.

Chairwoman Pearson: Dean said that he went to the Town and they don't have it in the Town files.

Building Inspector Stickles: I couldn't find it anything. It was just the permit issued in 2019 for 2 trailers to be put there on a temporary basis.

Anthony Mirando: The building permit doesn't always identify every aspect of equipment or structure. There's associated things that may not be identified.

Member Matise: A deck should be because it's structural.

Member Scieurca: Not only that, but when you talk about temporary trailer, you talk about temporary stairs too.

Anthony Mirando: With all that said, with a permit filed quickly after the violation, it's been before the Village.

Chairwoman Pearson: I'm just going to make a statement because I went to all the Village Board meetings and how everything had to be up to the Village standard code once they annexed in. They knew that from the beginning of the annexation. I understand that part of it was brought in under certain things.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

I'm saying that it's about the violations that Dean put to the Transit company, that you're saying whether he did or did not do the right process.

Anthony Mirando: I would like to follow up on my question about the deck.

Chairwoman Pearson: To me, there are other violations that have happened.

Anthony Mirando: They have to be looked at in a way that they're each justified because they're, quite frankly, confusing. There's conflicting statements in the 3 documents that make up the decision.

Chairwoman Pearson: That's a moot point as well, because what we're saying is that you got the violations, did Dean do the violations because you're in the Village now.

Member Matisse: You're addressing some of the violations.

Anthony Mirando: We've either already addressed. Our addressing by virtue of documented materials before the Planning Board, which are being reviewed only in the sense that we're removing the trailers. The application for the Planning Board wasn't for the violations.

Member Matisse: Do you have a time line of when you're removing the trailers?

Attorney Dickover: You've stated that you're not removing them until the Planning Board process is completed. It's an open ended question.

Anthony Mirando: Let me take an opportunity to speak with him further about it.

Member Matisse: You've had meetings with Dean to address these violations. You're addressing some of them. You've remedied one or two of them?

Building Inspector Stickles: They're in the process of remedying them by virtue of going to the Planning Board.

Member Matisse: If in fact, no matter how we decide, if we decide that our Building Inspector did the right thing. Is that a problem for you?

Anthony Mirando: Because that's the whole point of why we have to pause this and just keep working with the Planning Board.

Member Matisse: No matter what decision we make, you're going to continue working with the Planning Board.

Anthony Mirando: Not necessarily the case. Yes, that's our plan. But here's the thing, for sake of argument, say that something in here does require Planning Board approval that we don't agree with, it forces us to have to challenge that. That's no interest to us. We want to be working with you.

Member Matisse: We can't tell you what the Planning Board is going to do and we don't affect what the Planning Board does. We're just saying if our Building Inspector did his job, he did it effectively and go on from there.

Anthony Mirando: In terms of what, accepting that the violations are correct?

Member Matisse: Accepting that the Building Inspector did this job properly. You're questioning his authority at that time period.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Anthony Mirando: Yes. And the efforts in which were made to address them in a collaborative way. What I'm asking you tonight is if I can go back and just speak with our client and just make sure talking and see if there's anything else I can add that would be helpful in terms of the deck.

Chairwoman Pearson: We're making a decision on whether Dean was right.

Anthony Mirando: The point is that you're saying is that these things require something that I don't think they did. We're proposing to remove the office trailers. If we accept, let's just say for sake of argument, we accept that they are not allowed. Does that mean that other things that we think were allowed prior to annexation now start getting violations or has become an issue? The point is it's easy to say and we concede to just move on, but we've tried to do that. Rendering a decision tonight, really just pushes us against each other as opposed to working in the same direction. If you're telling me that those trailers are not permitted on the site. Then the next day somebody starts issuing other violations regarding those trailers. Nobody can accept that. My point is, instead of making a decision this evening, the first time I've been there, I can go back and talk to my client, maybe we can talk to Dean just to make sure if there's anything else that I need to talk about and then come back.

Attorney Dickover: The first thing I would say is whether or not the trailers can stay there is not an issue that's before you. It's not a subject in the stop work order. It's not the subject of the order of remedy. The trailers came into the Village's zoning pursuant to an annexation agreement. Their use pursuant to that agreement was permitted. The ordered remedy and stop work order were issued because work was done to those trailers that were above and beyond what was there when they came into the zoning district. Steps and decks. That's the allegation.

Anthony Mirando: What Rob just said is important because if you're saying it's not an issue of whether they can stay, that's not exactly what Dean's letter says.

Attorney Dickover: They can't stay because one was a temporary trailer. They came in with a temporary permit from the Town of Montgomery. Now you did work to them, which is a problem. You're changing the status quo in which it came in.

Anthony Mirando: Then that's the deck, not the trailer. If that's even the case, which I have to confirm.

Attorney Dickover: The stop work order was based on decks and steps being made to an existing structure.

Anthony Mirando: And it actually says using office trailers on the property.

Attorney Dickover: You were using them beyond the level of use that they came into the Village. Including sewer and water.

Anthony Mirando: Now this is how it all kind of spirals. That sewer and water is a great point. It's in my opinion, and we can dispute this, I think I can almost say nobody in this room has been working harder towards assisting everyone in connecting the sewer and water. What I'm saying is you can't just say that those trailers, which were used for Orange County Transit offices. Prepped for prior to the annexation. I think the letter says you have to stop use until they're connected to sewer and water. That's really selective enforcement. The entire site isn't connected. The annexation agreement expressly acknowledge that these things on the site are allowed to stay, they're permitted under zoning and for a period of time, in the future this will be connected to sewer and water. All of the properties. But this water singles out Orange County Transit who has been there.

Chairwoman Pearson: Orange County Transit is supposed to be purchasing the property.

Anthony Mirando: Yes. He didn't purchase it, yet.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Building Inspector Stickles: The order of remedy went to Walden East, LLC and it didn't say you had to connect the sewer.

Anthony Mirando: It does. This is part of the inconsistency in the orders, no offense, but in the in the cover letters of the orders, it says you have to stop using until you connect to sewer and water. The point I'm trying to make is, in this case, I really do submit to you that with Orange County Transit and what they're doing with the Planning Board. Making a decision tonight would not be in the benefit of anybody. We are pursuing very diligently with the Planning board. It just seems to me that there's a little bit of nuance here that we'd be ignoring if a decision is made.

Member Matise: Do you have any pictures from August of 2019 of when they put the trailers there? Did anyone document the trailers? Putting a deck and steps creates a permanency. Instead of being a temporary trailer, all of a sudden it's more permanent. It changes the nature. And why up to this point, have you allowed Dean to come inspect the decks and steps? People going in and out of there all the time?

Anthony Mirando: I don't want to certainly speak for Dean, I welcome him very much. Dean has been on the property.

Member Matise: Dean, have you inspected the deck and steps?

Building Inspector Stickles: I have not. But I have been on the property for other inspections.

Member Matise: Is your ability to inspect the decks and steps dependent on the decision we make tonight?

Building Inspector Stickles: No.

Anthony Mirando: We filed an application last year to do that.

Building Inspector Stickles: They did file an application, but it was under my understanding that before I could issue that permit, they had to get approvals from the Planning Board. Which they are working toward right now.

Member Adams: I'm still confused as to why you need us to do anything. In September, when Dean wrote this letter and said it there was violations. The site plan did not go on to the Planning Board at that point. Dean was in the right.

Anthony Mirando: The Planning Board application was filed in July of last year.

Member Adams: No, they went before for special use or something.

Anthony Mirando: Special use with an incorrect characterization of what was being discussed, but the application for the project that's currently before the Planning Board was filed in July.

Member Adams: There was no site plan in July.

Anthony Mirando: I have to go back and look exactly what was filed. Even so, the application was fully before the Planning Board at that time. As recently as Monday, new documents are being asked for as supplement.

Member Adams: I read the Planning Board minutes, so to me, there was no site plan in September, so Dean was acknowledging what wasn't right.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Anthony Mirando: My gut is to disagree with that statement, but I need to confirm.

Member Adams: Dean was right on September 14th. May be it would be different today, if this all came out because of the fact that you're so involved with the Planning Board.

Anthony Mirando: The items identified in the order did not require Planning Board approval.

Member Adams: But they did require a building permit. It isn't just the trailers, it's the decks and steps.

Anthony Mirando: And some of those things were called out for building permit and some of those things were called out for Planning Board. In one document they brought up one issue and another document didn't mention another issue. So, it's not as clean as that.

Member Matise: Is there an advantage to adjourning this?

Attorney Dickover: That's up to the board, if you want to hear or if the applicant wants to submit additional information and you want to hear it, you certainly can keep it open. I just want to clarify the timeline a little bit. The first meeting of the Planning Board on their matter was July 20, 2020. There had to of been an application by that date. The site plan itself, the drawings and the maps were not completed at that time and that's normal. The site plan application or further revisions and the map is continued to be revised even as of Monday night this current week. But the Planning Board had an application before its meeting on July 20th. I don't have the exact date that the application was filed with the Building Department.

Chairwoman Pearson: That makes it even worse for me because you had time from July to September to do work and get going and meeting with the Planning Board.

Attorney Dickover: The work that they wanted to do to change the physical features of that site required a Planning Board approved.

Member Adams: I just remembered the conversation in October that they didn't have the details they needed to deal fully with it.

Attorney Dickover: That certainly could be. The Planning Board gets revised plans and the plans are developed as the matters are reviewed. A plan never comes into the Planning Board in a final conclusive form that's accepted that night.

Member Matise: Can't you just withdraw your request to us?

Anthony Mirando: There's a window of time that I had an opportunity to come and speak to you about it and a window of opportunity to really have a discussion. If I withdraw it, then I'm outside of that window and we can't have discussion anymore. If we had a decision from the Building Department that says "as long as before the Building Department these stop work orders are rescinded". But we don't have that. I'm a lawyer. My job is to protect my client.

Chairwoman Pearson: But it also holds it open and if there's an issue with the Planning Board and you needed to come back to the Zoning Board, you don't have to refile.

Anthony Mirando: It's just an ongoing conversation. I think it's an opportunity to continue to have a discussion with Dean, with you and make sure that we're all growing in the same direction. It'd be a better opportunity to continue to work together forward.

Member Scieurca: What would be the benefit to adjourning this another month?

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Attorney Dickover: I don't know if there is a benefit one way or another. The question is having sufficient information and facts before you, upon which you could make one of those two determinations you just asked me to recite for you.

Chairwoman Pearson: I don't know if there's any more information than you'd be giving me next month that is going to make a difference. This is the letter that I'm going by.

Anthony Mirando: I'm bolstering the information in that letter and providing additional images and documentation showing the fences and prior use of the property and things of that nature.

Member Matise: Is there going to be a more concrete time frame in terms of what you're doing with the Planning Board and when these things would be remedied?

Anthony Mirando: Truthfully, I hoped to have such a wonderful meeting on Monday with the Planning Board that this meeting wouldn't even have been necessary. But there were some questions that came up and some, in my opinion, not as much moving forward as I could.

Chairwoman Pearson: We can put a condition on it.

Member Raymondo: The way I look at it, if we say Dean was correct, what's the outcome?

Attorney Dickover: If the board determines the orders issued by the Building Inspector were correct, it then becomes an enforcement question for the Building Department and for the Village whether or not they want to pursue fines and/or other provisions for enforcement. That may or may not require a trial in local Justice Court on those questions and the imposition of fines. That would be the upshot of a determination that the Building Inspector was correct. A decision to the contrary, that the Building Inspectors orders were not properly issued, would nullify them. There would be no subsequent enforcement. Again, whether or not the Village pursues enforcement of an order to remedy or not is up to the Building Department and the Village Board and their counsel.

Member Matise: Also the Building Inspector is saying that he can't do what he's supposed to do unless they're before the Planning Board. Now they are before the Planning Board. Some of the things that we would be upholding that he said he couldn't do unless they had Planning Board approval.

Attorney Dickover: That's not what he's saying. He's saying that the work they have done, steps and decks, fences and gates, were done without a building permit. And in order to get a building permit, I suspect, for the steps and the deck, if they are in fact new, requires site plan approval. The issue that I'd like to hear Mr. Mirando address, I haven't really heard it yet, there was also stop work order with respect to fences and gates. I think the contention was that those are new facilities and required not a building permit to be issued, but probably site plan approval. I think you've taken the position that they were actually repairs to existing structures. If you'd like to address that, maybe you should and then ask the Building Inspector what his position is on that.

Anthony Mirando: The fence gates along the two access points off Rte. 52. Fence gates have been there for a number of years and have been the same access points from forever. The gates that were on there were in bad shape. The applicant repaired them. Took down part of the slats, the actual gates that open and closed and put up new replacements in that place.

Member Matise: That requires a permit.

Anthony Mirando: But it doesn't require Planning Board approval.

Member Matise: Then you get back to the whole issue of not having site plan approval.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Anthony Mirando: These procedural steps, just force another step. When it just gets in the way of progress.

Attorney Dickover: Maybe the Building Inspector could address the board's questions and the applicant's statements with respect to the fences and gates and orders to remedy and stop with orders that were issued with respect to those two items.

Building Inspector Stickles: The stop work order was issued for the installation of a brand new fence and gates. The ones that were there, I don't think there were gates on the main entrance that used to go to the back. I don't know whether the gates were workable, but I know the one down by the garage, did have gates on them. But both of those were removed and replaced. They didn't have permits. And stop work order was for the installation for the decks and steps. The violation doesn't say, as far as I know, that they had to have Planning Board approval for the gates.

Chairwoman Pearson: I think his concern is also the trailers. Is anybody in those trailers now?

Anthony Mirando: Yes. Same use that is has been there.

Member Adams: If we can agree with Dean, but not pursue it in a legal sense until the Planning board is done, then that would mean that all of these would be taken care of through the Planning Board process.

Attorney Dickover: That would not be a determination or decision for this board. That's wholly within the province of the Building Department and ultimately the Village Board whether or not they're going to pursue enforcement. I will say to you that in the practical world, the applicants continued efforts to secure the site plan approval is taken into consideration in whether or not enforcement proceedings are going to be commenced. And if they are commenced, what was the ultimate request for damages or penalties and fines might be?

Member Adams: It would be out of our hands as far as pursuing the legal aspects after we've agreed with Dean, but then Dean could take it into consideration that it's now part of the Planning Board and let it sit?

Attorney Dickover: That would be part of his decision as to whether or not to pursue enforcement. Yes.

Member Adams: Then if he took it to the Village Manager and said that I feel that they were wrong on September 14th, but willing to let it go through its course. If it gets taken care of, then no procedure. And if it doesn't get take care of then we still have that option.

Attorney Dickover: That would be the nature of the conversation they might have.

Member Matise: If in fact, this board decided to make this open ended, would you leave it open for a month, 6 months or whenever Dean felt that we needed to address it?

Attorney Dickover: This goes back to the question that was asked earlier, what harm is there in extending this application and granting the applicant further time to submit? If you think it is harm, and I'm not sure that it is, is that enforcement is stayed pending the determination on this appeal. He cannot proceed with enforcement until this appeal has run its course.

Member Matise: Then the applicant can't proceed either.

Attorney Dickover: The applicant can proceed with the site plan application. They would be in violation with the stop work order if they continued to work. If they have continued to work then and the board finds

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

that the Building Inspector is correct, and then every day, I suppose that the violation remain, constitutes another violation, the fines applicable to that date.

Anthony Mirando: Is it worth pausing tonight? Having a conversation tomorrow and just kind of think about what the next steps are?

Member Matise: If you're asking us for an adjournment, does this address the steps that you would take?

Anthony Mirando: No.

Member Matise: Any kind of a timeline?

Anthony Mirando: The document you just got for me is substance in support of the discussion in the first letter. I can't tell you what the Planning Board is going to do.

Member Raymondo: What happened to the building permit?

Anthony Mirando: No, we have a building permit application filed.

Member Matise: If you have an adjournment everything that's standing right now, still stands for another month.

Attorney Dickover: My opinion is the applicant will continue to pursue their application in front of the Planning Board.

Chairwoman Pearson: We decide whether Dean was right with what he did is really the question.

Anthony Mirando: I'm not an aggressive attorney, but I have to say making a decision tonight in the middle of Planning Board application and other things, just like when the order was issued and I brought it right before the end of that statutory period to challenge it. It forces you because of time constraints on things to do something next.

Attorney Dickover: What he's saying is that an adverse decision from tonight will require his client to have a discussion about an Article 78 appealing a determination from this evening. The timeframe within which we do that and bringing a lawsuit is never a good way to try and work out people's problems.

Anthony Mirando: If you're up against time frames, you have to make a decision, that's all I'm saying.

Chairwoman Pearson: It's been 7 months since July. And they're really nowhere in their application to the Planning Board.

Anthony Mirando: We've submitted quite a bit of information. We've answered all the questions to date. Now we go back and have to answer more questions.

Chairwoman Pearson: Rob did say that if it moves forward and Dean was correct and we vote that way, Dean can then make a determination on these issues that he can tell them to do something different or he has to do what the stop work order says.

Attorney Dickover: What I said was that Dean in consultation with the Village Board and Village Attorney will determine whether or not they're going to seek enforcement of that. Take the applicant to court and perhaps have a trial on the issue or not and to impose financial penalties. Article 78 is a Supreme Court action on the merits of your determination.

Village of Walden
Zoning Board of Appeals Meeting
February 24, 2021

Member Scieurca: I agree with Mary Ellen on adjournment. I think it would be the best interest of the Village. I'm not saying I'm taking any threat seriously, but regardless, no matter which way we go, we have people expending energy whether to fine and force in court, where people are expending energy for possible lawsuit in Supreme Court. I think that adjourning and giving them the possibility to work with the Building Department through site plan approval. My one question is, though, at some point, even if he does his site plan approval for what he must do, do we still have to make a decision on this? Would something like this got worked out, would this be withdrawn?

Anthony Mirando: Yes. If could get through the Planning Board process and everything we've concluded with Rob and the Planning Board, yes. Then there's no fighting over it because it has been addressed.

Member Scieurca: The other side of the issue that I have with adjourning it is that we're still in the same position next month.

Member Matisse: We might be because the Planning Board process takes a much longer of a period of time. But also, if we go ahead and make that determination, I don't know how that impedes the Planning Board by creating another situation that doesn't need to happen.

Chairwoman Pearson: These letters of stop work order were given to Walden East, LLC. Would they be the ones coming to us? Why are we hearing from Transit and not the owner of the property?

Attorney Dickover: That's a good question. I think the applicant is in contract with Walden East to purchase these premises and since the violations were brought by the tenants activities rather than Walden. The applicant is here on behalf of the landowner.

Anthony Mirando: We have an owner authorization form to file. But we filed as a tenant of the property.

Member Matisse made a motion to adjourn for 2 months. Seconded by Member Raymondo. All ayes. Motion carried.

C. DISCUSSION ITEMS:

D. INFORMATION ITEMS: None

E. CORRESPONDENCE: None

3. COMMUNICATIONS: None

4. EXECUTIVE SESSION: None

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

RESPECTFULLY SUBMITTED
Marisa Kraus, Zoning Board Secretary
7:58pm