

Village of Walden
Zoning Board of Appeals Meeting
April 28, 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	Present
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.

1. APPROVAL OF MINUTES:

Member Adams: Page 3, under Anthony Mirando, last sentence, it's supposed to be "filed".

Member Adams made a motion to approve the February 24, 2021 minutes with corrections. Seconded by Member Scieurca. All ayes. Motion carried.

Member Adams: Page 2, under my name, 4th from the bottom, should say "people in the Village".

Member Scieurca made a motion to approve the March 24, 2021 minutes with corrections. Seconded by Member Adams. All ayes. Motion carried.

2. BOARD BUSINESS

A. PUBLIC HEARINGS:

A.1 45 Second Street, Continuation

Chairwoman Pearson: We did get letters from the Police Department and the DPW. It's nice to have on the record and in the future. Rob, the conditions, I know the fence is already in, we talked about certain plantings not to put there to make it big and closed in. Can we also talk about a fence in the future? Like no picket fence that's thick and wide. If they replace the fence again, it needs to be thin and open. Can that be a condition as well?

Attorney Dickover: You can condition a durational limit on a variance like this. Typically, it would be something along the lines of the fence that's there may remain as it is. I don't think you want to tie it to their ownership. To allow the fence to stand for so long, to remain for so long as it stands is a typical thing and that it not be replaced. If these folks have moved away, because apparently the height of the fence is tied to their dog needing to keep it corralled. Perhaps the condition might be that the fence has been installed shall be allowed to remain for so long as it stands. And you want to address the plantings, that that there'd be no plantings or landscaping along the edge of the fence that might further obstruct the view.

Chairwoman Pearson: As it stands as they own the home or is that not something you put in there? You said if they move away and someone else could put a different fence up.

Attorney Dickover: You could, for such time as they lived there or for so long as it may stand, whichever is sooner.

Chairwoman Pearson: I would personally like to see conditions on it just because I know some things can get big, rose bushes and big plants and big mums sometimes. We'll take Robs conditions.

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Member Matise: On the corner, it can only be a 2 foot limit. Then it triangulates 50 feet back from the corner. The height limit be 2 feet, which is why we're saying we don't want plantings, because that could grow beyond 2 feet.

Attorney Dickover: Are you suggesting that plantings could be allowed not to exceed the height of 2 feet?

Chairwoman Pearson: I would say that because you could put a 2 foot fence there.

Member Matise: It might be better to just not have plants there. If they sell to somebody else and somebody else wants to do that, they have to come to us.

Member Scieurca: I'm satisfied with DPW and Police Department's letter.

Chairwoman Pearson: I would like to see the conditions put on there.

Attorney Dickover: If the Board's going to entertain granting the variance, the condition would be the existing fence may remain for so long as it stands or until the applicants have sold and no longer reside at the premises, whichever sooner may occur. It would require them to remove the fence upon they're moving out and no plantings.

Member Sestrom: Wouldn't that turn up in the title search?

Attorney Dickover: No.

Lynn Thompson: What if these people leave and a new family comes and they have a dog and they want the fence to stay?

Chairwoman Pearson: They'll probably have to come back before the Board.

Member Scieurca made a motion to close the Public Hearing. Seconded by Member Matise. All ayes. Motion carried.

A.2 9 Woodruff Street

Member Adams made a motion to open the Public Hearing. Seconded by Member Scieurca. All ayes. Motion carried.

Belky Chimmelma: We just recently purchased this property. This is a 1 family right now, but we're trying to do a 2 family unit. It was before a 2 family, but since it's been abandoned for so long, it's considered to be a 1. Since we purchased it, we're trying to do a 2 family again. The house is already framed and everything. It got framed to 2 family. If we remove the frame, it's going to cost us more money doing it as a 1 family.

Chairwoman Pearson: When you bought the home, did you know it was single family?

Belky Chimmelma: The buyers told us it's a 2 family home.

Chairwoman Pearson: Did you have an attorney?

Belky Chimmelma: Yes, but they told us it was a 2 family. All the paperwork said 2 family. There's 2 meters outside the house. I went to the Building Department and they told me that it was once a 2 family but because it was abandoned for so long, they put it back to 1 family.

Chairwoman Pearson: Did you do work on the inside already? I thought you were only allowed to do the work on the outside.

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Belky Chimmelma: No. When we bought it, it was already framed on the inside. We didn't do that. Right now our permits are for the siding. There was a closed porch and we opened it up.

Chairwoman Pearson: Is there a staircase in the home?

Belky Chimmelma: Yes. It had 1 door for the first door and has another door for the upstairs.

Member Matise: If it's only framed right now, the stairs could be internal from the downstairs to the upstairs without having to go outside.

Belky Chimmelma: Right now, everything is framed to be like 1 apartment and 2 apartment. Once we put the sheetrock, you see that everything is set up.

Member Matise: So, in other words, the stairs could come down and you could have a landing and we could step into the downstairs. The stairs would be accessible from the inside. If you went into the downstairs apartment, because it's not framed yet, you could actually construct it so that it would go up the stairs from inside.

Belky Chimmelma: Yes.

Member Matise: It could be a 1 family, because it's only framed. The walls could be constructed so that it would be going up the stairs from inside.

Member Adams: When this was purchased, according to the paperwork we had, the Department of Taxation and Finance that was signed by the buyers in October of 2020. It's clear it states that it's a single family home. This was purchased as 1 family home wasn't purchased as a 2 family home and it's signed for by the buyer's attorney and also the buyers. The hardship is a little difficult to approach because it was just October when you purchased it as a 1 family home and you might have purchased it thinking that it was so big that it would be a good 2 family home and maybe they could showed it to you that it had potential, but you signed the papers that you knew it was a 1 family home.

Belky Chimmelma: Under the page that it had it said 2 family home. We were excited that we got a good deal on the 2 family home. Then when we got in it is when they told us it was a 1 family home.

Member Adams: This is the paperwork that was filed with New York State. Belky signed it and your attorney signed it, basically this acknowledges that you purchased a 1 family home. Maybe they told you that it was 2 because the previous owner started putting it together without it being approved either, maybe that's why they stopped putting it together.

Belky Chimmelma: It already has electrical on there. It's already wired up.

Chairwoman Pearson: There have been homes that have been turned over illegally, made into 2 family homes. And that's really the reason for the laws that after it's abandoned they go back to a single family.

Member Scieurca: There's 1200 square feet on the floor. It also fits the requirements of having square footage on each floor, right?

Building Inspector Stickles: Yes, she has the square footage she needs, if you were so inclined to grant.

Member Matise: But in R5 zone, is single family. The other issue is going to be parking. A single family home, you still have got to provide enough parking for however many cars you have.

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Belky Chimbelma: I think the survey said there are 4 parking spaces there.

Member Matise: Are you intending to live there?

Belky Chimbelma: No.

Member Matise: Even as a single family that you rent it out to, you would have to provide 2 parking spaces.

Member Scieurca: The survey shows for 4 spaces.

Member Matise: That means you're also means you're giving up the green space, the whole backyard. It's a very small lot.

Member Sestrom: Was it presented as a 2 family house?

Belky Chimbelma: 2 family, yes.

Chairwoman Pearson: You had to have an attorney on this sale. Your attorney didn't advise you that it was a single family?

Belky Chimbelma: No. They made it sound all nice and pretty until we signed everything, they told us that we have to go to the Boards.

Member Sestrom: Did you have a title search?

Belky Chimbelma: Yes, but they just did everything right away because we were so excited.

Attorney Dickover: Title searches don't report on local zoning. In the main part of the title search, it doesn't tell you what the district is, what zoning district is. It doesn't tell you whether it's legal or not. They don't report on zoning. But what does happen as a matter of practice, is purchasers attorneys will ask the title company to make an inquiry with the local Building Department and request what we refer to in the business as a municipal search. A municipal search is a request to Dean's Department for a letter that reports on 3 things. 1, is there a certificate of occupancy for the building and if there is, please present a copy of it. And that's typically a request for certificates of occupancy for all of the improvements on the property. If the building predated local zoning, this one I suspect does, the municipal report coming back from Dean's office will say that the building predates zoning. There is no certificate of occupancy. The second part of municipal search is whether or not the building fronts upon or has access to a municipal maintained street. You want to know that it has access to a municipal street. Dean's department would report on that. The third part of it is whether or not there are municipal violations of record. The of record is important because what that's asking Dean to report on is whether or not he has ever issued a citation or a stop work order or a cease and desist order against the premises because it violates a building or a zoning requirement. That is pretty standard for just about all of the local real estate attorneys around the state at this point. It doesn't show up in the title search, it's a separate inquiry made and it's typically made by the title company as a service provider to purchaser's attorneys.

Member Sestrom: We as a Board don't know if you had a complete search or it was an option.

Attorney Dickover: Well, she's answered that she doesn't know. But Dean may know whether or not his department ever issued a municipal report.

Building Inspector Stickles: Yes, there was one issued.

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Attorney Dickover: What did you report with respect to violations there or did it state anything about a single or 2 family house?

Member Scieurca: I pulled up some information on the property, but it seems that the County is missing a step as far as from how the seller that sold to you came into it. I'd like to know when the 2 family was taken away. It was a 2 family in 2006, but then the next transfer of title was in 2020. I'm trying to figure out in this where Crystal Development acquired title to the property to then be able to sell it to her.

Member Matise: I was under the impression that it was vacant since 2006.

Chairwoman Pearson: It was built as a single family home.

Member Matise: From 2006 to 2021, it lost its use. Was it this a tax sale?

Member Scieurca: I don't know. I'm missing a jump in ownership.

Attorney Dickover: When you buy a property at tax sale from the County or the County has already taken title and you're buying from the County, the County makes no representations with respect to anything. You buy it "as is", "buyer beware". You take your chances and you have to do your own due diligence to know what you are or are not getting into. Question about how did Crystal Development get title is not recited in the deed. But the applicant's title report that's been asked for would reveal how they acquired title. And for the record, this is an unlisted type action. The Board will need to declare yourself lead agency and review EAF.

Member Scieurca made a motion to declare Lead Agency and type unlisted action. Seconded by Member Matise. All ayes. Motion carried.

Attorney Dickover: You also have 239 response from County Planning dated March 30th, which recommends local determination, but they do remind you of the 4 factors necessary to be satisfied.

Chairwoman Pearson: Reasons for coming here, there's a few that go over with you. There are things you have to prove to us that there's hardship and why you want us to vote a certain way. Financials are some things that we look at. We look at financial statements, how much you purchase, how much things will cost, what the cost value is going to be. We always look at that as well. You have to prove hardship. You purchased the building, not really knowing it was a single family, but you should have known because someone should have told you that and you signed for it that way. Just know if we move forward, we will need financials.

Chairwoman Pearson read Municipal Report into the minutes.

Member Adams: Who was that to?

Member Scieurca: Her title company.

Attorney Dickover: What was the date of the letter?

Chairwoman Pearson: Date of the abstract letter is August 24, 2020 and Dean sent back on September 1, 2020.

Member Adams: They purchased it October 5, 2020.

Member Scieurca: Just adding on to what our attorney said, also in the federal court, there's what's called a tax search. Which tells you how the property is listed as well.

Member Adams: If they wanted to do an account for what they pay for, what they've put into it so far and what they plan to do with it. Do they plan on renting it or flipping and selling?

Member Scieurca: I would agree with you except I don't think we can get past 3 and 4.

Chairwoman Pearson: I agree. It's hard. But it is the laws that we have to follow, we just can't say, we're just going to do this to do it. We follow criteria set by the state. That's who we have to follow. That's why we're here. We have the hard jobs.

Member Scieurca made a motion to close Public Hearing. Seconded by Member Sestrom. All ayes. Motion carried.

A.3 43 Overlook Terrace, Area Variance

Member Scieurca made a motion to open the public hearing for 43 Overlook Terrace, Area Variance. Seconded by Member Matise. All ayes.

Chris Batson: We'd like to put a fence around our home. I think we're currently zoned that only the fence can be 4 foot high in front and sides and 6 in the back. We'd like it 6 all around. Our reasons for this are that we've got a young family. Growing socialites. Once we are able to host more, I assume we'll have a backyard full of young women and we have some safety and privacy concerns. Not that we live in a sort of bad neighborhood or anything like that, but we do live by a heavily traveled road and we just don't simply think that we want the general public watching our daughters or any of their friends at the swimming pool or playing outside on the trampoline or anything like that. Second to that, we have some other bizarre concerns as well. There's a bear that occasionally wanders in our backyard that would be wonderful to not live in fear of if the kids slips outside. The deer constantly destroy our property. We spent thousands and thousands of dollars trying to figure out what plant is not edible. Lastly, we do have pets. Currently, our pets aren't necessarily going to jump any fence, but that doesn't mean that down the road that we also wouldn't like a bigger dog that could only be contained by a smaller fence. Our primary issues are safety and privacy.

Tara Batson: Jeff Holmes driveway is literally in our backyard. So, privacy for them and us. Connecting to the side of the house but not to the front. It's an above ground pool.

Chairwoman Pearson: Do you have a fence now around the pool?

Chris Batson: No. We have a deck and then a railing around the deck.

Member Matise: Dean, the above ground pools, are they supposed to have fencing around the pools?

Building Inspector Stickles: Not if it's 4 foot above the ground. The pool creates its own fence at 4 feet.

Chairwoman Pearson: Are you leaving the deck on their?

Tara Batson: Yes.

Member Matise: What's the height of the pool?

Chris Batson: The water level is 48 inches, so that the actual pool would be 2 or 3 inches above that.

Member Adams: What kind of a fence are you proposing?

Chris Batson: 6 foot vinyl all together, you will not be able to see through.

Member Adams: None of your neighbors have an issue?

Tara Batson: Nope. They asked if they needed to come to the meeting to say their okay with it.

Member Scieurca made a motion to close the Public Hearing. Seconded by Member Adams. All ayes. Motion carried.

B. FORMAL APPLICATIONS:

B.1 45 Second Street, Area Variance

Attorney Dickover: For the record, the Board did receive a 239 response from County Planning and they recommended this matter be for local determination and also for the record, this is a type 2 action and that it seeks an Area Variance from 1 family residential dwelling, which by definition is a type 2 matter. So, no further environmental concerns are required and the Board should consider the 5 factors.

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. It had already been done and we are allowing it with conditions.

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 yes, but we are putting conditions on it.

Member Matisse made a motion to approve with the conditions as stated. Seconded on Member Scieurca. All ayes. Motion carried.

B.2 9 Woodruff Street

Attorney Dickover: If the motion is going to be to deny the request for this variance and if that motion were to be adopted, then you don't need to go through the EAF, because it's a denial.

Member Adams made a motion to deny the application. Seconded by Member Scieurca. All ayes. Motion carried.

B.3 43 Overlook Terrace, Area Variance

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 Pearson spoke for all by answering no.

c. Is the requested area variance substantial?

Chairwoman Person spoke for all by answering no.

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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. Just make sure you're not approaching the easement area.

e. Was the alleged difficulty self-created?

Chairwoman Person spoke for all by answering no.

Attorney Dickover: For the record, it's a type 2 action and you do have a 239 response from the County dated March 30th, 2021, reporting that it's a matter for a local determination.

Member Matisse made a motion to approve 43 Overlook Terrace, Area Variance. Seconded by Member Adams. All ayes. Motion carried.

C. DISCUSSION ITEMS:

Chairwoman Pearson: I have 1 training tomorrow, for Planning and Zoning Basics.

D. INFORMATION ITEMS:

Chairwoman Pearson: Training whenever you can get it. Send whatever you have to Marisa. She can put it in your file. 4 hours a year.

E. CORRESPONDENCE: None

3. COMMUNICATIONS: None

4. EXECUTIVE SESSION: None

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

RESPECTFULLY SUBMITTED

Marisa Kraus, Zoning Board Secretary

7:29pm