

Village of Walden
Zoning Board of Appeals Meeting
June 23, 2021

Chairwoman:	Rebecca Pearson	Present
Members:	Christine Scieurca	Present
	Gregory Raymondo	Absent
	Mary Ellen Matise	Present
	Brenda Adams	Present
Alternate Members:	William Sestrom	Absent
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.

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

1. APPROVAL OF MINUTES:

Member Adams made a motion to approve the April 28, 2021 minutes. Seconded by Member Scieurca. All ayes. Motion carried.

2. BOARD BUSINESS

Orange County Transit

Anthony Mirando: Status update. I've been trying to get them in writing as much as possible. But also, it's been a few months, so we've had a very, very busy several months. Most importantly, have has a very busy last week and a half or so. We appeared consistently before the Board of Trustees, about every month and done written submissions and updated them as much detail. In addition, just on Monday night, actually, I'm pleased to report that after a lot of work with the Planning Board, we were able to complete the SEQR process by getting a negative declaration. That helped free up some things with the other agencies that we're working, particularly Department of Health. We're set up to appear again next month with the Planning Board for a public hearing. We'll continue to go before the Board of Trustees and provide updates to this Board. Also, as part of that Planning Board process, the applicant is working to try to provide some additional things, such as additional screening and berming along the eastern property line. On Monday we discussed replacing the fencing on the southern property line and some other screening and some other operational ideas that will help bring buses further to the site.

Chairwoman Pearson: How about the in and out?

Anthony Mirando: There's a main entrance and a secondary entrance. The entrances will be the same as they are now.

Chairwoman Pearson: How close are you to being connected to the Village water and sewer?

Anthony Mirando: We still have to go through a public hearing and we have to get a decision. I'm hoping, in the next couple of months. We can never predict what happens in the next few months. I'm assuming conditions of approval of that. We'll have to finish up our outside agencies, which is Department of Health. We haven't gotten any feedback from the Department of Transportation, unfortunately, and that's been over 6 months. Their review is for a highway permit. It's going to be several months to connect by the time we get through the next few months of municipal planning and then it will be a few months to satisfy conditions. But every month that we're making significant progress to get there. There's sewer and water lines that run into the site internally. But then there's the highway that you have to connect to. There's work that we have to do in the right a way to connect to the main that exists up the road. It's still a work in progress, but I don't think there's anything else we can do.

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Chairwoman Pearson: We thank you for your updates. Appreciate that.

A. PUBLIC HEARINGS:

B. FORMAL APPLICATIONS:

B.1 15 & 17 Overlook Terrace

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

Bradley Cleverly: The applicant owns 2 lots, 15 & 17 Overlook Terrace. These lots are existing for many years. The zoning set back is 45 feet. What he would like to do is to construct a new residency. 25 feet off front yard. Which is consistent with the neighboring properties, which are 25.9 feet.

Member Adams: I would like to know, when you want this 10 foot to be moved closer to the road, is it so that you can move the rear of the house? Is the whole house moving or is it to make a bigger house?

Bradley Cleverly: They're pretty typical, not unusually large residences. They tend to just to move the entire building toward the front yard so that the drop off in the back is not so much. It's a tremendous drop off. Looks like there was fill a placed there years ago and it just drops off. Advantages would be less disturbance on the site and it's consistent with the neighbors.

Member Adams: Have you considered a smaller house?

Bradley Cleverly: There's only so much you can make as far as the depth that makes sense of what people expect about as far as the residency. These houses are going to be about 25 feet deep or so.

Chairwoman Pearson: Do you know the square houses? There's no house plan in here.

Bradley Cleverly: They're entirely consistent with the neighbor at 19 Overlook.

Member Adams: Have you considered making a smaller house that is more consistent with the houses towards the outside?

Bradley Cleverly: There still is an issue because it drops off so much. They want to put this size house up that is consistent with the neighbor.

Member Adams: What are you going to do with the back side? What are you going to do to protect that back?

Bradley Cleverly: Certainly there will be a foundation designed by an engineer. Most likely there will be a retaining wall so there will be some yard in the back.

Member Adams: Dean had mentioned in his letter about the Village right of way to the water. How does that effect this?

Bradley Cleverly: It won't effect it because it's in the front yard.

Member Adams: I'm really concerned about that slope in the back. People have had problems from previous house built on that side of the road. I don't want to see any damage to the houses below.

Bradley Cleverly: That's a reason to move the house forward. So, it's not so much of a drop off in the back.

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Member Adams: You've have given no second thought to making a smaller house.

Bradley Cleverly: It's what the market supports.

Member Adams: We have builders all over Walden that are building to the size of the lot. They have to come to us a variance.

Bradley Cleverly: They also probably don't have lots that drop off.

Member Adams: Some of them *inaudible* but they are building to the house to fit the lot and that's my concern. That you're tampering with something that doesn't need tampering with.

Bradley Cleverly: That's their approach. This owner would like to build homes consistent with other homes on the street.

Member Scieurca: I tend to agree with Brenda. Although I know 19 Overlook very well. The retaining wall, I believe, is the 2nd one that the builder put in prior to building the house. That is a concern. It is conforming to the Jacob Ridge Subdivision. But there are smaller houses on there too.

Bradley Cleverly: Yes, there are smaller, older houses there.

Chairwoman Pearson: I have some issues. I was around when they were building Jacob's Ridge and what a mess it was. They clear cut. That will not be allowed this time. No clear cutting. There's no control on your maps. No anything on the maps that we have some questions on. Issues with the neighbors in the back of you. It was a total nightmare. If we can stop things like that from happening again and I kind of agree as well with that. Design a different path that fits the spot and can probably get the same square footage or maybe change to a different type of home.

Irma Rivera: 38 Madison. My house is in the back. The water flows through the back drop, flows and sits in my yard. That's the issue that I have. There's no drainage.

Chairwoman Pearson: And that's with all the trees there now. When they start to cut, you start to move dirt, fill and retaining walls.

Irma Rivera: My yard is like a pond. I can't use my yard.

Ken Murray: 40 Madison. We live below that and before they built the other 2 houses that you were saying they had so much problems, we never had water problems until they built those houses. They completely washed my driveway away. I got that under control, but now they want to build again and move it again, who knows what I'm going to get. Before they built on that, we had no problem. And now they want to move stuff again.

David Sperry: 12 Overlook Terrace. I didn't look at the plans, are you going to build the same type *inaudible*

Bradley Cleverly: The retaining wall has not been designed yet. Will be dependent upon getting this variance for the houses.

David Sperry: But is it going to be the same type of retaining wall that's already existing?

Bradley Cleverly: I'm not familiar with exactly what type of retaining wall that's back there, because it wasn't my project.

Chairwoman Pearson: If you're facing the lot water is supposed to go to the left to the detention basin.

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Lynn Thompson: I don't live in that neck of the woods, but I have a question. I'm confused. I don't quite understand what the size of the house has to do with this. It's the piece of property that's the issue. How does the size of the house impact this? Because the backyard is still going to be a problem. Even if you grant it, the backyard is still the same. Issue is still the same in the backyard.

Member Adams: But you're not digging the foundation as far back.

Lynn Thompson: The problem is already the property. From what I'm hearing these people say, it's already a problem. The way the whole thing is graded, the retention pond, the swale isn't working, the wall is not really ideal. Even planting the trees there is not controlling a lot of the erosion. Even if you move the house forward and even if you feel like you're not disturbing the ground as much with the foundation, that drop off in the back of that property is still the same.

Member Adams: From my position is that the house is smaller, there's less property being disturbed. If they build a house, they have to protect that hill and make that slope better and make it safer for the houses below. If we just leave it as it is, it's an empty lot and they have to walk away from that site. Then nobody is ever going to fix the runoff there.

Lynn Thompson: I understand that, but sounds like there's been ample time for that issue to be corrected and it's never been corrected, according to these people.

Chairwoman Pearson: its empty lots.

Lynn Thompson: The gentleman is saying he wants to do something very similar on the 2 empty lots. It sounds to me like the same problem is going to be the same problem.

Chairwoman Pearson: It can be the same problem, we're trying to hopefully mitigate those problems by putting things that have to be on the map.

Member Matise: The issue exists now because of the way the Planning Board dealt with the 2 houses was built.

Chairwoman Pearson: They can bring in fill and just keep filling up that lot and put in a retaining wall and build it where it is, and then they can do the runoff that way. It won't runoff as much but I'm guessing that they don't want to do a lot of those because it's expensive to do the fill. The problem is the amount of money to do to make it stable, doing a better job of performing and making it stable to make it work on that slope. It's a big slope.

Member Matise: It's very steep. And then it becomes a Village problem because the Village had to do the swale and maintain the swale.

Member Adams: I would like to have further information addressing things that I talked about. The things that the engineer talked about. The one thing that the engineer did not talk about that was in Dean's letter was the right a way for the Village.

Bradley Cleverly: We can certainly add that to the drawings. You'll be able to see the reduced impact overall to the site, reduce impact to the existing trees. Moving the house forward, using these retaining walls.

Member Matise: When these lots got the approvals, they didn't at that time establish conservation easement for the steep slope. Is it possible for the Planning Board, Village Board to do that this time?

Attorney Dickover: No.

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Chairwoman Pearson: *read letter from engineer into minutes*

Bradley Cleverly: The site would be graded. There would be no advantage to moving trees.

Chairwoman Pearson: We are very cautious because we've heard that before. People go in and cut them on weekends. They clear a couple of properties. Ahead of time we want to make sure it's going to be done right.

Member Adams: James Clearwater sent me a letter and he expressed his views. He wrote the letter of the criteria that we need to have. The last sentence on "D" says that, construction permitted will not cause an adverse physical environmental condition any worse than that created by the construction of other homes. That is our major concern, that it wouldn't be any worse.

Bradley Cleverly: It's an existing residential lot.

Member Adams: Our goal would be that it would not happen at all.

Bradley Cleverly: I'll speak to Jim.

Chairwoman Pearson: Whoever bought the property, bought it knowing what the slopes were and knowing what was going to have to happen there. So, that hardship is not there.

Attorney Dickover: You have received a 239 response from County Planning that was dated June 8th and recognize local determination. For purposes of SEQR by definition, this is going to be a type 2 action, because they are seeking area variances for 1 or 2 family homes. Dean, could you acknowledge for the record that the publication of the public hearing notice and the mailings were done and have been received?

Building Inspector Stickles: Yes.

Attorney Dickover: The original subdivision, I believe had a drainage easement that went across the front of these properties and my question is whether or not by moving your homes forward to a 25 foot setback will violate that existing drainage easement.

Bradley Cleverly: The next submittal will reflect that easement.

Attorney Dickover: The drawing that I saw, you're going to be on top of it.

Bradley Cleverly: I'll confirm.

Attorney Dickover: Depending on the outcome of that, this Board's request for condition that you start building retaining walls. I think you're going to be in a situation where you may have to go back to the Planning Board for either a site plan approval, because the subdivision that was approved is in fact a site plan condition. Here you are making changes on the site, houses, easements and retaining walls, which I don't think were on the original subdivision approval.

Chairwoman Pearson: If he gets approval from us, he may not have to go back to the Planning Board?////

Attorney Dickover: You could condition your approval on obtaining a site plan.

Chairwoman Pearson: Could we put a condition that if it does not start to be built within a year then they have to go back and do something different?

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Attorney Dickover: Durational limits with respect to variances are allowable, but they have to be reasonably related to the project at hand. The answer is, yes, you can do that, but you have to be reasonably related and why.

Member Matise: When the other 2 houses were built, I think that the swale issue became a Village issue. The Village had to build that swale. I don't know if that was an oversight of the Planning Board when they did the approvals. But how do we prevent that from happening behind these 2 houses?

Attorney Dickover: I don't know the history of the subdivision approval and what happened during that or afterwards with respect to the swales, so I can't speak to that. Dean has the subdivision map with him, but I haven't examined it yet. Between now and the next meeting, I'll take a look at that.

Chairwoman Pearson: On your assessment form, number 17 on page 3, proposed action create storm water discharge flow to adjacent properties. The answer you put down was no. I think it should be a yes. I would like to see that change on the form.

Bradley Cleverly: I can make that change.

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

B.2 150 East Main St

Member Matise made a motion to open public hearing. Seconded by Member Adams. All ayes. Motion carried.

Denise Gualtieri: We are asking for a use variance. Our plan is to start a business, we're in estate sales, so basically we will utilize the building to meet with potential clients to discuss their plans and run the estate sales at the client's property. We will be bringing all of their stuff and selling it outside of this building. After we close out the estate sale, whatever is remaining, sometimes we bring items, we would like to bring back to the building and do online sales. Then in the future, potentially, if we get approval, be able to open our doors to the public. If we did get approval, it wouldn't be long hours. We would have very limited hours because we do work outside this typical business. I don't feel that our business would impede on any of our neighboring businesses or residence. We don't expect it to be high traffic. Definitely no late hours.

Chairwoman Pearson: We did get a letter for proxy, which is not in the original paperwork. It was publicized and did send out mailings.

Building Inspector Stickles: The County has not responded to this application as of today.

Member Adams: I like your plan. It's very nice. You're here for a use variance, it's not an allowable use for that building. Unfortunately, the property owner has come before us before. She was well aware that there has to be a hardship to get a use variance. The hardship has to be shown with financial value that why the zoning is hurting her financial position. She knows this. We've talked to her the last time around, I thought we were very clear and she sent you here without any of that information. She's the one with the hardship. Not you. She owns the property. You want to rent and use it as your business format. You don't have the hardship. You could find another place. I realize this place is the ideal location for you, but you don't have the hardship. She has the hardship. The problem is, she has to show us the financial evidence why the zoning is a hardship for her. I have a problem with going forward with this because she's not here to provide that information and you can't because you don't have the hardship. I'm sorry to say that because I like your business plan. I think what you're going to do is a good thing.

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Chairwoman Pearson: The building is zoned residential. What can go in there is a home. We've scoured our code book to see if there's something that we could possibly get you to do to be in there and there's nothing unless the Village Board changes the zone. What can happen is because you want to put retail and change the use residential to what you want to do. We would have to change the zone. If we change the zone, you will be able to stay there, but if you left there, then other businesses or other residential retail things could come in that building which may not be as beneficial to the neighborhood. This plan is very different than what wanted to go there before. Which is wonderful. But the zone is residential. And she knew that. For me to say that to you, it upsets me. We went through this in October with another business. They didn't fix it up like you did. I see it's beautiful.

Member Scieurca: At this point, either have the landlord provide information that we're talking about so that we can make possibly a different decision or they would have to go in front of the Village Board to do a zone change.

Chairwoman Pearson: Or can add a special exception use to the code. You would have to go before the Village Board and see if they can change the code. Right next to you is a dr's office. If they decided they could put in something like special exception use for that piece of property, which would be an office, that's possible. We don't have the authority unless we want to change the whole zone in that area, which a lot of the neighbors the last time were against, they didn't want a business there because it could be a very high traffic. Your business plan is beautiful and we are sickened at what's happening.

Denise Gualtieri: I understand. How did the previous businesses use that place?

Building Inspector Stickles: The building has never been residential. Many people before the last applicant and these ladies days have come, they granted variances. How? I don't know.

Member Adams: It was also a long time ago. Codes have changed. Boards have changed.

Chairwoman Pearson: We don't have an answer for you, because we weren't a part of that decision.

Denise Gualtieri: I'm saddened. She basically just informed us that the type of business that trying to use the building was like a convenience store. Which I completely understand why the residents or anybody in that area wouldn't want that type of business in that location. I just don't understand. This building has always been a business and you never used it's a residence.

Member Adams: When you stay empty for a long period of time, you lose your exceptional use. If something is in use when the code goes into effect, it can stay that way. But when it goes empty and dormant for 1 year. This was empty for many years. Then it reverts back.

Lynn Thompson: I come to a lot of Zoning Board meetings, I very clearly recall the woman who came with the gentleman who wanted to rent the building. I very clearly recall this Board telling her what she needed to provide and I very clearly recall she never came back. You asked her to bring financial records. She never came back. We need to encourage business to come to our Village. I feel sick that these 2 young ladies want to bring something so positive and so lovely to our Village and your hands are tied. I feel like all of us, my Board included, really needs to exhaust every single possibility so these 2 women can proceed with what they would like to do. I agree with you. The owner of the building needs to come here with the correct paperwork and it's really a shame that she did not tell these 2 ladies what needs to be done.

Chairwoman Pearson: We almost didn't listen to you tonight because she didn't send the proxy. Dean had to get it from her today. We are saddened as well. It's a great place. It's a great business plan. It's awesome.

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Member Scieurca: And right now, in the economy that we're in, I don't think it would be very difficult for her to show a hardship.

Attorney Dickover: Understand this Board's position. They have 4 criteria that they have to examine on your application. 1 of which is very difficult on a use variance. And it's dollars and cents proof that this property cannot be used under the permitted uses in the zone, cannot be used for that purpose and you cannot realize a reasonable economic return. That's proof that the landlord has. You don't own that. What this Board is saying to you is that even if you continue with this application, which you have the right to do, in the absence of the landlord coming here and proving her financial hardship with respect to this property, this Board would have to deny the application. If there's no one else from the public here, you have this right to the hearing, I would suggest the Board adjourn the public hearing for 1 month to see whether or not the landlord wants to come here and provide, if they can, the necessary financial proof of hardship. The Board at this point, doesn't have the evidence they need to grant your application. And frankly, you can't produce it. So, rather than denying your application this evening, I think fairness would have this Board adjourn the matter for a month to see if the landlord has any interest in coming forth to provide the dollars and cents proof necessary.

Member Adams made a motion to adjourn public hearing. Seconded by Member Matise. All ayes. Motion carried.

B.3 2 Ayr Ct

Ordrais Cilius: We are building a deck and also planning on screening it and putting a roof over a portion of the deck. We are looking for approval.

Member Scieurca: Your intention is to build 14x20 deck. Are you removing the steps that are there currently?

Ordrais Cilius: Yes.

Member Scieurca: When you say roof and screening, are you talking about a 3 season room?

Ordrais Cilius: Just a screen.

Chairwoman Pearson: The deck was there and you tore it down and built a new one? Or is it for a new deck? Is it built already?

Ordrais Cilius: Yes. We're just waiting to get approval for the screen.

Chairwoman Pearson: When you bought the house, was there a deck on the house?

Ordrais Cilius: There was but it was not sturdy. Was not safe.

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

Member Adams: Dean, the deck itself is legal, it's just the screened in porch and roof that's a problem?

Building Inspector Stickles: They had an open rear deck. Probably 10x12 that came with the house. It had no roof on it. What they're proposing to do is make it 14x20 deck and a portion of it they want to put a roof on. When you put the roof on the deck, it has to meet the setback of the main house. If there was no room for anything to put on it and they couldn't construct the deck as they started, they have a legal permit to do that. They're really here to reduce the rear yard set back so that they can construct the screen area and the roof over it.

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Attorney Dickover: This is subject to 239 and you don't have a response yet.

Chairwoman Pearson: Publication and mailings are here.

Member Matise made a motion to type 2 action for SEQR. Seconded by Member Scieurca. All ayes.
Motion carried.

Member Matise made a motion to hold public hearing open. Seconded by Member Scieurca. All ayes.
Motion carried.

C. DISCUSSION ITEMS:

Member Matise: I'm concerned about the time limit for proxy. Is there a time limit that we can set on the applications be complete? We didn't get that proxy until 3 o'clock today.

Attorney Dickover: You do have a time limits, I think, for applications to be submitted. I didn't realize there wasn't a proxy in the application.

Building Inspector Stickles: The owner was not in the state when they put their application in. She was supposed to send me 1.

Member Matise: I understand that there's prep time that we put into all of this. If she hadn't sent the proxy, then we're sitting here with something that we've spent time preparing for. I just think it's not fair to us. I think that we should have the completed application at least the day before, if not sooner than that.

Building Inspector Stickles: What would the proxy have kept you from reviewing?

Member Matise: You review it differently when you know you're going to talk about it that night than if you know you're not talking about it.

Attorney Dickover: Technically, that would be correct, but I think in the past this Board has always taking people at their face value. If they say it's forthcoming and you would honor their presence here and not waste their time either. But I understand your point and that's why I think you probably, I don't know what the time is for submission is for variances but 15 days before you need publication time. Need time to review applications and quite frankly, we had this conversation with you before about an introductory meeting, before you scheduled public hearings. I think your code probably requires that the Board establishes the public hearing date and here the Building Department is doing it because they get the application and trying to move these applications fast. But if you follow the strict code, this Board is supposed to establish the hearing date because of issues like that. They would come in and introduce the project and maybe tell them they don't have a proxy, you're missing your SEQRA. We don't have a map, deed. You can tell them what they're missing before you ever scheduled a public hearing. But with trying to speed this process along, you give it to the Building Department, the authority to schedule public hearings, but this is what happens.

Chairwoman Pearson: How many communities do you deal with that do what they're supposed to?

Attorney Dickover: I don't know how many ignore the requirement that the Board set the public hearing. There are certainly some that do, some that I represent, but there are others that do require the introductory needed and I represent some of those Boards to that. They do it because of what happened tonight. I've told them and they, in fact, have changed their rules to comply with the statute says. I think Walden, you try to accommodate your citizens by streamlining the process, making it quicker than it is supposed to be.

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Member Matise: Because it becomes a long process. I do appreciate the fact that it was streamlined because otherwise you're dragging it out and then people get really annoyed with you anyway. I think the application should be complete and there should be some time line before we set the agenda.

Member Scieurca: I kind of like the idea of an introductory meeting. Because we would still be in the same position that we were in tonight. It would have been an introduction, the hearing would have been in July and they would have had everything. So, they would have come back again anyway.

Attorney Dickover: To that point, 150 East Main Street application, you might have never heard if they came here for an introductory meeting. They would have been told what was required and may have realized that they couldn't meet that requirement and just not incur the expense of publication and mailings. But you're kind of picking your poison here.

Building Inspector Stickles: However the Board wants to do it. If they want to have the applicant come to a pre meeting, that's fine with me. But some of these applicants don't want to wait and they're not going to come in here. Both of the 2 last applicants that you heard, I told them that you couldn't make a decision tonight because the county would not be responding in time. They both made a big deal about being on the agenda. I discussed it with Rob and he advised me that they could be on the agenda, but they may not be able to get any approval. So, if you want to come up with a procedure that you want me to follow, just write it down, have Rob look at it and I'll follow it.

Member Matise: The thing about the proxy is that, they would've shown up and we wouldn't have even talked to them, if she hadn't sent the letter.

Attorney Dickover: I think you have engaged you have engaged before.

Building Inspector Stickles: You also have people bring mailings in after the meetings, too.

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 Scieurca. All ayes. Motion carried.

RESPECTFULLY SUBMITTED
Marisa Kraus, Zoning Board Secretary
7:43pm