

Village of Walden  
Planning Board Meeting  
February 14, 2022

Chairman:	Stan Plato	Present
Members:	Jay Wilkins	Absent
	Lisa Dore	Absent
	Jason Trafton	Absent
	Zac Pearson	Present
	John Thompson	Absent
	Jennifer Muehlen	Absent
Alternate Members:	Basil Stewart	Present
Building Inspector:	Dean Stickles	Absent
Village Attorney:	Robert Dickover	Present
Village Engineer:	John Queenan	Present
Secretary:	Marisa Kraus	Present

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Chairman Plato - Called the Planning Board meeting to order at 7:30pm with the Pledge of Allegiance.

**1. APPROVAL OF MINUTES:**

Member Stewert made a motion to approve the December 13, 2021 minutes seconded by Member Pearson. All ayes. Motion carried.

**2. BOARD BUSINESS**

**A. PUBLIC HEARINGS:**

A.1

**B. FORMAL APPLICATIONS:**

**B. 1 98 Gladstone Ave, Site Plan/Special Exception Use**

**Chairman Plato:** Didn't show up, but I have a concern. Close the public hearing, there's a certain amount of time, if we don't act, I believe it's an automatic approval?

**Attorney Dickover:** It is not an automatic approval. The law says the board shall render a decision within 62 days of closure of the public hearing, but there's no automatic approval provision with respect to site plan unlike subdivisions where there is an automatic approval. You're subject to being sued to force you to make a decision. Or you could make a decision this evening, either rejecting the application or approving the application or approving it with conditions.

**Engineer Queenan:** Today is 62 days.

**Chairman Plato:** I'm not ready. I don't think myself is ready to approve, but I don't want to get into a fine either. If the applicant was here, first thing I would ask was to waive your right to a time limit.

**Attorney Dickover:** The other option is to hear what John has to say about his updated review. Perhaps you can resolve to approve it with conditions that may be required if the applicant doesn't like that, they can come back and seek a modification of the approval.

**Chairman Plato:** No matter what John has and not to put that down, there's a lot of questions that I don't think that John can answer. Like, I'd like to know what these kids do on a Sunday if there's recreation facilities. They lock them up there? They say they don't leave without a guardian. How do you not leave without a guardian if there's 2 people on site and there's 20 kids?

**Attorney Dickover:** General comment on that because the board had 2 things that you asked me to take a look at last month, which I didn't want to comment upon, but I will now. 1 was whether or not in this, I think, came from your audience, whether or not you could require security cameras to be installed on the

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premises. And the 2nd question was whether or not you could require particular staffing numbers. In general, the operations of the applicant's business and the means and manner in which they operate that business are off limits to the board. You've dealt with this before in the nature of hours of operation. We just had a comment on this last applicant about the hours of operation and they are specifically provided for in the conditions for circus use that the board shall establish the hours of operation and that's related to potential noise impacts on the neighborhood. But in the absence of that, the means and manner in which an applicant proposes to conduct their business is off limits to this board. And so I think that the idea of requiring security cameras are in that category, why? We're not going to have the public watching security cameras. The only people looking at it would be the applicant for their purposes. That gets into their means of operation and that's off limits. Second thing with respect to staff, whether or not they can conduct their business with adequate staff really is off limits to this board.

**Chairman Plato:** Who would it not be off limits to?

**Attorney Dickover:** The State Education Department. That's who they operate under. They've got to meet certain requirements for staff. The idea that you're concerned about what they're going to do for recreational purposes may very well fall into that same category. What are they going to do? Have they made adequate provision for the recreation of those students? That's really their business. Now, if they want to come in and put in playgrounds, basketball courts, tennis courts, what have you, that would fall back into your purview for site plan review and approval, but they're not proposing to do that and to require them to do so and to inquire into what they do there for recreation. Yeah, you can ask, but can you require them to provide recreation? I don't think so.

**Chairman Plato:** Do they have a requirement to come before this board anyways if they're not making any changes?

**Attorney Dickover:** My opinion has been and remains that they do because they operate under the special use permit that was granted a prior user on a particular narrative. Now this applicant, when they first appeared here, their narrative would have been different based on what they told us verbally. They then came back and said, we're going to do exactly what they did before. Albeit their verbal representations to this board were in fact different. So, I think this board has been wrestling with what exactly is their narrative. And this is where John and Dean ask questions about fire access and things of those nature. So I don't know that we have an answer to that yet, but we do have their written statement that they're going to operate just like the prior approved applicant did under their narrative, albeit their verbal comments, I think, are somewhat different, not by much and maybe even a little less impact where the prior Chapel field applicant was bussing on a daily basis into the premises and off of the premises. This applicant has indicated that they would bus only intermittently, perhaps during a break in the term of the school semesters and perhaps other special occasions, albeit their use is a little different in that they might have parents dropping off and picking up where the prior Chapel field applicant did not speak to that, and I don't think they had that going on.

**Engineer Queenan:** It's the discrepancies between the information you get one meeting to the next. Really what it boils down to is my 2 main comments are 1 the applicant was indicating that they were bussing, then they weren't bussing, then they were bussing and now they're not bussing. What I look at that is they don't now meet the parking requirements, in my opinion, because if you're not bussing the students, you're going to have pick up and drop off days where you could have up to 30 families riding on the property to pick up and drop off. And we're not looking at the parking for that. We're not analyzing for that because you're telling me that this isn't really going to happen. So it's been kind of back and forth. That's one of my bigger concerns is that the comparative analysis that he's got before the board now, he says that perhaps no bussing at all. None. But the site plan still indicates that there's going to be busses. It says bus entrance, bus exit and drop off and loading area. We only have 10 parking spaces. How they would accommodate those additional cars on those days. Maybe only 4-5 days a year. But Gladstone is a narrow road and you're going to have cars on both sides of the road and it could be an issue. Again, they've already said that at the property, they can't have any commencements or gatherings that require a parking.

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**Chairman Plato:** What about under SEQR? 70 kids, teenagers in a facility with no parents and 20 people watching them, is there something with SEQR with an impact on the Village?

**Attorney Dickover:** I don't know that any impacts have been identified. You can speculate, perhaps.

**Chairman Plato:** It would be speculation. If you speculate, is there a way to stop it?

**Attorney Dickover:** I don't think you can speculate with respect to a SEQR determination, you'd have to have proof before you that this was going to occur and that would have to come from some other resource, not just speculation. I don't think we have that. Keep in mind, this board has approved the use as a school previously. I don't recall exactly what the staffing requirements were. I don't think they were much different.

**Engineer Queenan:** What he's currently saying is they're going to have 20 to 30 students and they're going to staff of 4. And 2 24/7 caretakers and 2 additional staff that come in during the day. I'm assuming custodial or a cook of some sort. So, they're saying they need 4 spaces. Then they left the rest for visitors. Which fine. Then the other comment we've been going back and forth on is the fire lane in the fire code. The applicant went to the State Department of Building Codes. They came back with basically a decision that if nothing was changing and the use was existing, then the code doesn't apply. But Village code on the site plan says that the Planning Board can look at anything in regards to health, life, welfare and safety. Dean and I have both spoken and we're going to agreement that the front loop lanes should be striped as a fire lane and sign, so that there's no parking there. The applicant has not so far agreed to do that. As far as I'm aware. The rest of it is a simple little clean up here and there. But those are the 2 main sticking points.

**Attorney Dickover:** Looking at the prior approval for the Evangelical Little Sister. The previous occupancy under the Little Sisters was 9 staff, 16 to 20 regular occupants and a maximum of 20 visitors for a total of 49. EAF is proposing 30 students and 5 staff members. This applicants talking about 20 to 30 students, 2-4 staff members. There's actually maybe more staff.

**Engineer Queenan:** With today being the 62 days, does the board have to act?

**Attorney Dickover:** No. The code says the board shall make a decision within 62 days, but there is no automatic approval for failing to do that. What it does is it gives the applicant the ability to start a lawsuit to compel you to make a decision.

**Chairman Plato:** What I would say is the applicant was on for tonight, it's within the 62 days, he did not show up. We have questions that could not be addressed. We could take a negative action, which wouldn't be to the applicants desire. We could take a positive but we can't do without having those questions answered.

**Attorney Dickover:** You can deny the application based on a failure to provide sufficient answers to the board's questions and allow the applicant to come back in and reopen their application. That's the other way to deal with it. I think this board has historically tried to accommodate the applicants that appear in front of it and to change course and to deny the application tonight, though, somebody might want to sue you to force you to make that determination. I think in keeping with this board's past practice, there's no reason to change. I would suggest you table the application and see if the applicant shows up next month.

**B.2 120-126 North Montgomery Street (Falcon Rest) Site Plan/ARB**

**Larry Marshall:** Last Planning Board meeting, we discussed the on the ground condenser units versus p-tech units that the applicant wishes to install on the building. We provided to the board 2 things. 1, photographs of the Maybrook facility that the applicant, which has the on ground condenser units series. He also provided us with some additional photographs of the p-tech units that he is proposing. These are

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nearly flush Mount p-tech units with color match so that each of the grills would match the facade that it's on. Then photographs 6 & 7 are in Somerville, New Jersey. These are the older p-tech units. These units project from the building quite a bit. These units are not color match. These are the older units that everybody is accustomed to. This is not what he is proposing. He is proposing the flush mount units. The renderings are great, but I think photographs convey information a little bit better as far as what the overall look like. In addition, we also received this Building and Energy Code Compliance Services, a breakdown of the noise that is generated at startup and running for the 2 proposed units for the ground condenser units and the p-tech units. Then we went ahead and kind of did an analysis based upon New York State DEC's policy for assessing for noise assessment. We provided basically a recap of what we can expect for the additional p-tech units versus the condenser units. As we discussed at the last meeting, there are far more, roughly 3 times as many p-tech units as the condenser units, but they're also on 3 levels. They're sporadically, they're across the entire facade, whereas the condenser units have to be grouped in between the windows and they're at ground level. Generally around the site, what we have found based upon the noise levels that we were provided is that the condenser units are far more impactful. In terms of noise level, than the p-tech units would be even though there are 3 times as many p-tech units. That's basically the breakdown of what we provided. We've been going over this for several months.

**Chairman Plato:** On the site plan, you would have no problem using 54/48 db?

**Mr. Hartman:** Right, that would be part of the condition. As far as looks, we would use the flush ones with the facade.

**Chairman Plato:** I understand you didn't want them on the roof for 2 reasons. 1 was service. They don't require of a lot of service. It's not that hard to access.

**Mr. Hartman:** Correct. Also, because it's a slope roof. Would have to build platforms. \*inaudible\*. Shingles has been proven to work.

**Member Pearson:** If they were to all run at the same exact time, the 54 decibels, it would have a maximum level of 60.

**Larry Marshall:** There's a certain level where basically that you reach where there's a difference in noise level that the additional noise no longer adds to.

**Chairman Plato:** You say that the upper floor really have no impact or minimal impact at the ground level.

**Larry Marshall:** Once when you double the distance, you drop the perceived noise level by 6 decibels. If you're at if you're at 50 feet and it's at and you notice a level of 54 at 100 feet, you would notice 48. That would be the perceived.

**Chairman Plato:** So, these figures at 54 and 48 are at what distance from the unit?

**Larry Marshall:** I do not know that answer. I assumed it was at a level of 50 feet. If you assume my thought process was, I assume they're at the same exact distance. Doubling of that distance would reduce those numbers by 6 decibels.

**Chairman Plato:** I think we have to know that. Db. Level is one thing, but not the distance.

**Larry Marshall:** Were these numbers measured at the unit? Or were they measured at a certain distance?

**Mr. Hartman:** This was at the unit.

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**Member Stewert:** For the ones on the 3rd floor, how close are the other buildings, adjacent to the land?

**Chairman Plato:** Who would be most affected by this noise?

**Larry Marshall:** Approximately about 80 feet. Now keep in mind that we do have a ring of vegetation that's going through here around the perimeter. And I believe there's evergreens that are going in which would be year round noise abatement.

**Chairman Plato:** What's the noise level for the property line here?

**Engineer Queenan:** Generally for residential zone, I think it's between 55 and 60. Then your commercial zones are in the 70s.

**Chairman Plato:** I believe you had 2 things before us for Architecture Review.

**Larry Marshall:** We made some changes to the facade and then we added the \*inaudible\* through. Which I believe the footprint changed a little bit with that.

Member Stewert made a motion to approve with the conditions of 54 starting, 48 running on a unit, with flush mount and color match. Seconded by Member Pearson. All ayes. Motion carried.

**B.3 39 Edmunds, Site Plan/Subdivision**

**Ross Winglovitz:** We were before you regarding the warehouse, you informed us that there was an application on the property also for the service. Went back to our client to confirm that after a while we did get confirmation that they do want to include the circus as part of the application. They've agreed to incorporate that into the application for the warehouse. To John's first point is just a little bit of a brief overview of what is proposed and the changes to what's proposed. There's an 81,000 square foot warehouse submission that's been proposed. Basically, in addition to the rear of the existing building, the applicant and the owner of the properties basically at capacity in the current building, and we'll be looking to expand into that new building with a connection to the existing structure. There'll be 5 loading docks, parking. 1 of the changes is we have expanded the parking along the front of the building. Andre has come on board with us back in November, so he took a fresh look. We've added some additional parking around the front of the building, basically using existing parking lots, expanding it to improve the parking. There was a small parking lot on the left hand side of the entryway as you come in. We're showing that as truck parking. That's what is being used for now. We figured that's probably a better use for it. Keep the parking closer to the building while the truck parking over there, where it has a better relationship to the loading docks on the existing building and on the proposed building. The biggest change is in the rear. Right now, where the tent sets up now, it was actually it was a lot \*inaudible\* for the Village for a well, and they actually used that for the tent area that they put it up for the rehearsals. They want to relocate that to the back of the property near where the RV hookups are and have been maintained here since for a long time. The goal would be to use it consistent with his past history, so it's about 6-8 week period before they go off and do other shows. There's no public consistent with the code. The only public events they can have are not for profit. Which they use always have once a year. But there are no guests here. Everybody else will just be the performers that will be working or the circus and they'll be located in the RV area for the short period of time and using the tent area for the rehearsals and the storage of equipment. That tent area is fully sewer and water. That goes back across the site. This also is going to be proposing a 2 lot subdivision as part of the application. Because of the configuration of the property, we were looking at how to get the rear light frontage. It really lays out a planning perspective is just to put the last line down the middle of the wetland. But then the lot in the rear wouldn't have any lot frontage or lot width. John noted that we have to check to see if that meets lot width and there's a conflict in the code. So, whatever your interpretation is is fine. We'll make it work. The bulk table actually says to the front building line, but the definition of lot width says to the front setback so that the bulk table conflicts with the definition of lot width. This is now 100 feet would need to be increased to 150. If that's the board's determination, I think we would look at probably bringing that lot line more down the center of the road and having an easement down the driveway half on one and half on the other with a common easement and then just an easement

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for parking back to the warehouse. We would still meet lot coverage requirements. John asked about the DEC wetlands that were delineated and confirmed by the DEC. We do have a map, will provide a copy for the Village for their records confirming the delineation as shown on the plan. Their will be permits. That pond area now was actually gravel parking area or staging area that's been used forever, so we're going to reclaim that area and use it for a pond. It is within the buffer. Tent height, we had indicated 60 feet. Parking for the tent area. Since there are no performances. We would ask that the board set reasonable parking requirements. Most of the people will be parked in the RV area and we did provide a parking area in staging area in front of the tent. We could stripe that up for a parking.

**Chairman Plato:** Before when they were here, they had the a performance for the residents of the Village. What about parking in that case?

**Ross Winglovitz:** In that case, we would probably have to have an agreement and do it on the weekends, with the warehouse and use that. The other issue I want to bring up is the special use requires ownership of the lot. That's the very last section of the circus. This lot is not owned by the circus, nor is it proposed to be sold to them. I don't know that it's going to require some kind of variance. It's going to be a lease in place for that property and would not be ownership and that is what the special use requires.

**Engineer Queenan:** The circus use is a permitted use. I'll take a look at it. Ross hit on the major comments. We just did a general overview. It's more of a concept plan sketch there. There's a lot more work that's got to be put into this. Grading, utilities, drainage, lighting, landscaping. From the overall view, my biggest concerns were lot layouts in terms of the bulk table, especially the lot width. Subdivision plan now. Take a look at the fire code. Then the apparatus road. Just make sure you meet that because. The loading areas would prevent you from doing that because there would be an obstruction. Going to need a lot of wetland permitting. Ross started that ball rolling with it. You had a note on here, and I think you touched upon it that you were saying that the Planning Board would set the hours of operation. Normally, unless it's waived in there, the board couldn't determine those for you. I think if you fall into what I wrote here, the parking regulations would be 1 per 3 seats or square footage of area. But if you're not doing performances, then come up with the number of employees seats or something to that effect and prove we can get it in that zone. The rest is just clean up stuff. Some EAF cleanup questions, some consistency between number of employees between documents. Keep in mind those 2 sections at the end. Regarding tree clearing and landscaping requirements. Until we see a fully developed plan set, it looks okay.

Member Pearson made a motion to resolve to circulate the Planning Boards intention to be Lead Agency. Seconded by Member Stewert. All ayes. Motion carried.

**B.4 ARB – 35 Main St, Sign**

None

**B.5 ARB – 19 Orchard St, Siding**

Member Pearson made a motion to siding as presented. Seconded by Member Stewert. All ayes. Motion carried.

Member Pearson made a motion to close to close the Architectural Review Board and Open the Planning Board Meeting. Seconded by Member Stewert.

**C. DISCUSSION ITEMS:**

**D. INFORMATION ITEMS:** None

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E. **CORRESPONDENCE**: None

3. **COMMUNICATIONS**: None

4. **EXECUTIVE SESSION**: None

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

RESPECTFULLY SUBMITTED  
Marisa Kraus, Planning Board Secretary  
**8:32pm**