

CHAIRMAN: GEORGE AULEN  
MEMBERS: WILLIAM OLSEN, JAMES PATTERSON & JESSE GALLO  
Alternate: RAEY WEBSTER

VILLAGE OF WARWICK  
PLANNING BOARD MEETING  
JANUARY 18, 2018

The monthly meeting of the Village of Warwick Planning Board was held on Thursday, January 18, 2018. Present were: George Aulen, Bill Olsen, Jim Patterson, Jesse Gallo, Village Engineer, David Getz and Planning Board attorney, Robert Dickover. Others present were: John McGloin, Mr. and Mrs. Johansen, Ross Winglovitz, Keith Woodruff, John Cappello, John Christison, Frank Petrucci, Robert Schmick, Patrick Gallagher and others.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo and carried to accept the minutes of the December 21, 2017 meeting. (4 Ayes)

VILLAGE VIEW

SCOPING DOCUMENT

VILLAGE VIEW

A MOTION was made by Bill Olsen, seconded by Jim Patterson and carried to reschedule the public hearing until February 15, 2018. (4 Ayes)

The scheduled site visit on January 20, 2018 at 10:00am was cancelled. The Board will discuss rescheduling a site visit at the February 15, 2018 meeting.

Mr. Dickover – From my review of the December 21, 2017 board meeting I see that the Board type the action as a Type 1 and I gather it is because the premises is contiguous to the Historic District and I see that a Long EAF has been submitted. I also noted that a public hearing was waived on the application but I do not find any provisions for a waiver of a public hearing on a site plan application and so a public hearing will need to be scheduled.

The Board reviewed the Long EAF.

A MOTION was made by Jim Patterson, seconded by Bill Olsen and carried to declare a Negative Declaration under the SEQR process. (4 Ayes)

A MOTION was made by Bill Olsen, seconded by Jesse Gallo and carried to schedule a public hearing for site plan approval on February 15, 2018. (4 Ayes)

Mr. Getz – It says that the building height is greater than 35ft.

Mr. McGloin – I will change that it is less than.

Mr. Getz – Can you also clarify on the plan the size of the apartments and the parking situation.

Mr. McGloin – I am not sure how to clarify it on the plan, there are two, 1 bedroom apts that exist and that is why we proposed 3 parking spaces, 1 for each apt. and 1 for the employee/owner of the boutique.

Mr. Olsen – Is it paved or gravel?

Mr. McGloin – It is paved.

Mr. Getz – Unless it is there already can you please put on the plan that there are two, 1 bedroom apts. existing.

Mr. McGloin – I can do that with a note.

Mr. Aulen – The Board will wait to review the sign application until the next meeting.

Mr. Aulen – We have quite a bit of correspondence on this particular application and some we have just received in the last few days and a new site plan has been submitted with a lot of changes.

Mr. Winglovitz – We were last before you in October of 2017 for the public hearing. Since that time we have done several studies and made modifications to the plan to address comments from the public and the Board at that meeting. The lighting has been lowered to 14ft. high with light shields...

Mr. Aulen – So they went from 20ft. high to 14ft.?

Mr. Winglovitz – Yes.

Mr. Olsen – Which will throw out less light, right?

Mr. Cappello – Yes.

Mr. Winglovitz – So we had to add a number of poles because there was concern regarding the potential spillage of light into the residential properties neighboring so we have lowered them to 14ft. to reduce any potential light from leaving the site.

Mr. Olsen – Is it still the same kind of lighting?

Mr. Winglovitz – Yes, it is totally shielded. The outdoor dining patio has been removed from the plan at the recommendation of Phil Grealy, the noise consultants, along with additional notes that have been provided on the plan regarding noise and mitigation for the noise. The HVAC equipment which was originally at the rear of the building, then moved to the side of the building has been moved slightly forward. Mr. Grealy has specified specific exhaust fans for the building based on his noise study. We have removed any outdoor speaker systems...

Mr. Olsen – It is not in the notes, I only see it in the letter.

Mr. Winglovitz – Correct, it is only in the letter.

Mr. Olsen – Shouldn't it be in the notes?

Mr. Cappello – We certainly can put it in the notes.

Mr. Winglovitz – We have also limited the use of the side porch on the building to 9pm...

Mr. Cappello – The food service will cease at 8pm so no one will be served past 8pm and no one should be on the covered porch past 9pm.

Mr. Winglovitz – There were additional environmental studies so there are actually 3 environmental studies on the property, the initial Phase 1 site assessment that was performed by Going Assoc. some years ago which took soil samples, did investigations for any subsurface structures across the entire site, there was an additional study done when we did the archeology, there were test pits that were done across large areas of where the previous structures were located based on the historical map and that was all negative, then again back in November we did additional trenches across the building location and that was basically negative for any significant environmental findings. There was a question regarding lead and the standard that the individual who spoke about lead in exceedance was speaking about the wrong standard. The commercial site and a commercial standard are much higher for the allowable lead and we are way below that. There was also additional correspondence to that affect submitted by Going which clarified that. There was another issue about chromium findings and those are way below the commercial standards as well. So, we are confident that we have done more than is required of us and in the environmental site assessment under normal standards. In my 30 years of experience for a site that we did not find anything on, we have done more trying to find something than I have done on any other site that I have ever been involved with. Usually you will do more when you find something, we found nothing and did two more analysis after that and found nothing with significance regarding the environmental issues on site.

Mr. Cappello – I would add to that, there was a question regarding the magnetometer. The last one done around the footprint and beyond confirms that the entire site was scanned by a magnetometer to determine whether there was any evidence of any metal buried on the site and nothing was found.

Mr. Olsen – Where is that stated?

Mr. Cappello – In the January 17, 2018 letter.

Mr. Winglovitz – It is all basically pointing back to the original report where that was all discussed originally. In the new report they just supplemented those studies...

Mr. Cappello – It confirms what was done where there may have been historical tanks in there and also confirmed that the photos that were presented was an old septic tank that was located during the archeological dig and that originally has been backfilled.

Mr. Olsen – It is metal or...

Mr. Christison – Concrete.

Mr. Winglovitz – In the letter dated December 7, 2017 from Maser Consulting provided additional information regarding traffic, because there were concerns why other intersections were not analyzed. They basically took a look at those other intersections based on previous traffic studies that were completed and found that there is no significant impact with the number of cars as they distribute from the site to those intersections.

Mr. Cappello – They were also able to conclude that even though those sites may have aged a bit, that the current counts that were done at the one intersection that was requested were consistent with what the prior traffic studies showed at that current intersection so based upon that they made the determination that the counts were consistent and they also said that even with the distribution, even if all traffic was distributed from this facility to those intersections, they would still operate at a service level of A. That was in the original submission and clarified again in the letter dated January 17, 2018.

Mr. Aulen – It appears that they have encompassed all of the significant questions that were brought up...

Mr. Cappello – The only thing I would add from the Maser letter on the noise, just so it is clear on the record, is that the porch area is covered on the top but it is designed in a manner that if there was any evidence, even though there will be no speakers and no one on the porch after 9pm but if it were ever discovered that the noise was excessive, this has been designed in a manner that could be fairly easily enclosed to cut off any noise from there. With the measures designed with the exhaust fan and based upon the testing and analysis by Maser and these mitigation measures that our available and proposed for when we can do actual measurements which can be incorporated fairly easy.

Mr. Getz – When you say that the porch can be enclosed, there is a back wall currently proposed, is that right?

Mr. Winglovitz – Yes.

Mr. Getz – So the enclosing that you mention is constructing a sidewall?

Mr. Christison – Yes, part of it is enclosed on the side and the back and then he designed it where if we have to we can close the rest of it.

Mr. Getz – Is that a wall from floor to ceiling?

Mr. Christison – Correct.

Mr. Olsen – So it will be an enclosed porch?

Mr. Christison – Yes.

Mr. Getz – How about in the front, would that include...

Mr. Christison – We will probably put something in the front, probably a door. You would have to put a door for egress and the same on the side.

Mr. Getz – There is a proposed drainage easement so we would need a survey and meets and bounds information at some point. Also, there are certain mitigation measures that need to be bonded, the fencing and landscaping...

Mr. Christison – That is not a problem.

Mr. Patterson – I have a question regarding noise, we originally talked about the applicant doing some testing after the building was put up and these letters seem to just indicate that if noise is determined to be too loud, are you still proposing do the testing?

Mr. Cappello – If the Board requires it. We proposed those mitigation measures when we did some testing before hand of the surrounding area to provide you the background but if there is a request or a condition that testing be done upon occupancy the Board can make that condition and we would comply with it and then the mitigation measures would be, if necessary, installed.

Mr. Patterson – I just don't think it should be on the Village to do the testing. How does the grease trap get emptied or serviced? It seems to be far away from the driveway.

Mr. Winglovitz – They will honey dip it from the parking lot.

Mr. Patterson – Mr. Getz can you check on that grease trap and see, I believe that there is something about a secondary trap that the DEC would like to see for observation to make sure it is clean water coming out.

Mr. Getz – I will check.

Mr. Gallo – I think the proposed times for garbage pick-up should be on the plan notes...

Mr. Winglovitz – In the map notes, sure.

Mr. Gallo – And I think that the discussion of no outside speakers should be updated on Note 16 on the plan.

Mr. Aulen – So the notes on the site plan need to be updated, correct.

Mr. Winglovitz – Yes, based on your request.

Mr. Olsen – I agree on the notes for the speakers and garbage. Also that the noise should be monitored, is there some set date that the noise will be monitored, how do you want to do that?

Mr. Cappello – Within 30 days of opening? Though we want to give it time to be occupied...

Mr. Olsen – Probably during the summertime because that is when people will be sitting outside and when a potential problem could be. So summer or spring...

Mr. Cappello – We could say the first June weekend after it opens, I don't want to say 30 days because if by the time he builds it may open in December.

Mr. Aulen – We can't give a specific date it is going to have to be sometime after they open, we don't know how long it will take him to build...

Mr. Getz – And at a time when the side porch is being used.

Mr. Aulen – If your building is completed by the summer then at that time you could take a noise test.

Mr. Olsen – The first June or July after it is open.

Mr. Aulen – Or August, somewhere within a reasonable period after you open.

Mr. Cappello – During the first summer that it is open.

Mr. Aulen – Yes, that seems like a reasonable time.

Mr. Cappello – We are okay with that.

Mr. Aulen – Does anyone have any comments on the reports that the Board received from Going Associates and Maser? I believe that they have answered the questions that were brought up in a letter from Mr. Gross that we received late on January 12, 2018.

Mr. Getz – Yes, I think that they have answered the questions, specifically about the Welling, Orchard & Elm St. intersection.

Mr. Olsen – And the sound is obviously the biggest issue and we may have to deal with that in the summer.

Mr. Aulen – They have done considerable mitigation by removing the outdoor patio, limiting the use of the outside porch and that is a fairly significant mitigation as far as the sound goes, however, we still need to have it measured.

Mr. Olsen – And I appreciate you working with the lighting, I think it is a very important part.

Mr. Dickover – I think the record should reflect the receipt of various correspondence and dates so that it is clear what the Board has received and considered. Beginning with a letter dated Dec. 8, 2017 from Mr. Cappello regarding schedule of submitted materials, there was then a letter from Dec. 11, 2017 from Stephen Gross of Hudson Highlands Consulting Group concerning SEQR process. There were then four items submitted on Jan. 3, 2018, the first being a letter again from Mr. Cappello being a cover letter that was accompanied by an environmental report that was dated Dec. 1, 2017 from Mr. Going & Associates, there was a Maser Consulting memorandum on traffic and noise dated Dec. 7, 2017 and there was a revised site plan pages 1-11 prepared by Engineering & Surveying Properties and that was accompanied by another plan from Landark Studio's revised Dec. 20, 2017, which I believe are the landscape plans. We then received from Mr. Getz a letter dated Jan. 9, 2018 with his comments, Jan. 12, 2018 was another letter from Mr. Gross regarding the noise analysis, environmental site investigation and the SEQR process. We had a letter dated Jan. 17, 2018 from Maser Consulting which was a memorandum on noise and another one dated Jan. 17, 2018 from Mr. Going regarding environmental site investigation. The reason I mention these things is that in Mr. Gross' 2 letters to the Board he has suggested that the Boards' SEQR process is flawed and it is suggested that the Board should consider rescinding the previous Negative Declaration on this matter and placing it with a Positive Declaration requiring an Environmental Impact Statement from the applicant. The procedure that he has suggested is founded within the 6 NYCRR and regulation and SEQR provisions. In order for this Board to rescind the previous declaration, they would have to find that substantive changes are proposed for the project" the key word being substantive" or new information discovered or changes in circumstances related to the project have arisen that were not previously considered by the Board and you determine that a significant adverse environmental impact may result from that. Were you to consider a rescission, you must inform involved agencies as well as the applicant who would have a reasonable opportunity to respond to that proposal and if following that time period the Board were to determine that you were going to rescind the Negative Declaration, you would then potentially replace it with a Positive Declaration and require an Environmental Statement to be

prepared. This evening, if the Board is going to consider Mr. Gross' suggestion, then you would need to follow that procedure which I just outlined. On the other hand, if the Board is satisfied with your prior Declaration, I suggest that you reaffirm it based on the information that has been received by this Board and not only at the public hearing but subsequent to that, additional comments received from the public's consultants as well as from the applicant's consultants.

Mr. Olsen – I had really seriously thought about rescinding the Declaration based on information concerned from the public, however, I have seen the new plans and the changes that have been made to the new plan at this stage, I think this answers the questions, I think it does. Now, with these changes, I don't think we have to amend SEQR.

Mr. Dickover – No, the questions are, are they substantive changes that result in an Adverse Environmental Impact...

Mr. Olsen – No, I feel that they reduce them.

Mr. Patterson – I agree with Mr. Olsen.

Mr. Gallo - I do too.

Mr. Aulen – I also agree with Mr. Olsen. So we should affirm the Negative Declaration?

Mr. Dickover – I would suggest you do that.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo and carried to reaffirm the Negative Declaration declared under SEQR. (4 Ayes)

Mr. Dickover – Now the question is whether or not the plan is complete and whether or not the Board wants to make a decision on this application. I have not prepared any kind of Resolution with not knowing which way the Board was going to proceed this evening. If the Board is inclined to consider approving the application I would prepare a written decision with respect to that for your review and consideration, perhaps for next month. In the meantime the applicant can make the changes that are required to the Notes if the Board is satisfied them.

Mr. Patterson – I would like to see all of the changes in writing.

The Board agreed.

Mr. Aulen – And the grease trap?

Mr. Getz – We can work out those issues.

Mr. Aulen – When we get a final revision on the site plan the Board can make a decision then at the next meeting.

Mr. Dickover – There is a time clock which has been suspended by the applicant from a letter, probably back in November of 2017 where the time was suspended necessary for the Board to make its decision after closing the public hearing. Is the applicant willing to extend that time again?

Mr. Cappello – Yes, but do I understand that the Board is directing your attorney to prepare a draft for you to look at based upon us getting the notes on the final site plan?

Mr. Aulen – Yes we are.

Mr. Cappello – Then yes, then it will be February 15, 2018.

Mr. Aulen – Yes, February 15<sup>th</sup> .

Mr. Cappello – I would like to clarify that it is the notes on the plan for 1) no speakers 2) the commitment to test the summer after opening 3) time of garbage pickup...

Mr. Olsen – Did we clarify the time of operation on the porch? Just make it clear because it was not clear.

Mr. Cappello – The grease trap, is that a building permit issue or is that...

Mr. Getz – I will speak with Ross and if need be maybe the Health Dept.

A MOTION was made by Jim Patterson, seconded by Jesse Gallo and carried to adjourn the meeting. (4 Ayes)

Respectfully submitted;

Maureen J. Evans,  
Planning Board secretary