

CHAIRMAN: GEORGE AULEN

MEMBERS: WILLIAM OLSEN, JAMES PATTERSON, JESSE GALLO & KARL SCHEIBLE

Alternate: Kerry Boland

VILLAGE OF WARWICK
PLANNING BOARD MEETING
OCTOBER 18, 2018

The monthly meeting of the Village of Warwick Planning Board was held on Thursday, October 18, 2018 in Town Hall. Present were: George Aulen, Bill Olsen, Jim Patterson, Jesse Gallo, Karl Scheible, Kerry Boland, Village Engineer, Dave Getz and Planning Board attorney, Robert Dickover. Others present: Kirk Rother, Robert Silber, Susan Roth, Elizabeth Cassidy, Sally Kopher, Kayleigh Maher, Raymond Maher, Fred Carlborn, Lugene Maher, Donna Haley, Mike Conklin, Steve Gross, Ross Winglovitz, Jay Myrow, Beau Kennedy, Jason McGovern, Ron Charlton and others.

Mr. Aulen – Before we accept the minutes I would like to clarify a statement. Mr. Rother said that “the Village of Warwick Planning Board adopted new zoning regulations”. The Village of Warwick Planning Board does not adopt zoning regulations. The Village Board of Trustees adopt and create zoning regulations.

Mr. Patterson – On page 4 it states “there is a financial sheet” where it should read Sign-In sheet.

A MOTION was made by Jim Patterson, seconded by Bill Olsen and carried to adopt the minutes as amended. (5 Ayes) {1 Abstention – Karl Scheible}

Mr. Aulen opened the public hearing.

Ms. Elizabeth Cassidy –I am a local attorney here in the Village of Warwick. I have been retained by Lugene and Raymond Mahr to evaluate the proposed Village View subdivision and provide my thoughts on it. I will not go into the various environmental impacts but I wanted to focus on the intent and the letter of the Clustering Law and what gives the Planning Board the authority to authorize a Cluster subdivision. The subdivision law that allows Clustering is found in NY State Law 7-738 a Village Board may authorize the Planning Board to authorize cluster subdivision take lots and make them smaller, adjust sizes to avoid environmental areas, the State

law specifically states that you can't exceed the yield plan, you can't exceed what would be permitted otherwise under the base zoning. I looked at the Local Law 14-2015 that created this statute and that local law does not supersede the State mandate. I respectfully suggest that his PB is bound by local and state law and it says if the yield plan is 28 the lot count is 28. Putting aside the State law issue I would like to focus your attention on the local law, there are several elements that the current plan does not meet even though it is required by 145-29, specifically your clustering plan calls for spacing requirements from the primary and secondary conservation areas. In one area it says house lots shall not encroach upon primary conservation areas that is section 145-29H, shall not encroach, and in taking a look at the DEIS and the proposed lot I found no fewer than 6 lots that encroached in primary conservation areas, mainly steep slopes. Also, other things that the plan fails to identify are certain environmental issues such as tree lines as well as identifying 15% slopes. Stepping away from the law, I want to comment on the spirit of the law. Clustering was designed both at the State level and the local level to be flexible, it was not designed to if you have ten acres and there is half acre zoning and you get 20 lots, so let's make these 20 lots smaller and save all of this space, it was not designed to take these 20 lots so that you can get 10 more. That was not the intent of the underlying State statute for here. We can see that some of this intent just by the nature of the additional lots other things had to be added, we had to add cul-de-sacs outside of the original development plan. We know have to have stormwater, we have to look to additional plans to accommodate the extra infrastructure required for these additional lots. So again, I ask the Board to take a thoughtful look at this. Before I conclude I do have written comments that have prepared to submit to the Board for it's record. This Board is performing a coordinated review, so the review stops with you. Once you make your Finding Statement every other Board can rely on that statement. I am very appreciative that you have taken significant time and I hope you continue that through and thoughtful process taking the hard look that you need to take. I would also suggest that be mindful of the potential segmentation, I believe Mr. Gross raised it briefly earlier but I see concerns when the DEIS references future road connections and we have additional infrastructure that only begs for expansion of the proposed development so with that I am not going to add anymore to the stormwater or traffic, I think you have heard enough of that but I did want to bring your attention to the letter and the spirit of the law.

Sally Kopher – I yield to the next person on the list.

Kayleigh Maher – 15 Galloway Hts. – I have grown up in Warwick my whole life and I know live on Galloway Hts. and I formally lived on Woodside. I am not going to go in on everything because you guys have most certainly heard enough about traffic and everything but I did want to say that growing up here, I graduated from Warwick schools, I have lived here my whole life except when I was away at school. I am one of a very few handful of people my age, from my class who came back to Warwick and decided to stay in Warwick. I stayed in Warwick because of how Warwick is, I stayed in Warwick because Warwick is my home and I love Warwick and I like the Village and that is where I chose to buy a house and start my adult life. I look at this development and I think, Mr. Rother had mentioned at the Planning Board meeting last month that this development would good starter for young families. I don't know many young families that are going look into \$400,000 plus homes with taxes over \$10,000 on .2 acre lots to start. I know I certainly could not do that. I bought a starter house, I bought a 1,200 sq.ft. house on .3 acres and that is a starter home for a young family just starting out. As a Planning Board you are

would one of the first people to put my house on the market. If that is the direction that Warwick is going to go in and we are just going to have a continuous of Cluster homes taking up land and taking up space that is not the reason I stayed. I stayed because of how Warwick is and I would like you to consider keeping Warwick how it is, beautiful, quiet without divisions of Cluster homes. So I would like you to consider people like me, the younger group that would love to stay in Warwick but it is not cheap to stay in. I was only able to stay here because I have amazing parents to help me stay in Warwick. So if that is the group you are for to stay here I can tell you right now young families can not be included in that division with the price of the homes. I just wanted to say from a younger perspective and because I know that you have all been bombarded with environmental things but from a different look I don't think that this is the direction that Warwick needs to go in.

Lugene Maher-52 Woodside Dr. – I have previously spoken to the Planning Board as well as the Village Board and my husband and I have submitted several sets of comments and questions so I don't intend to repeat those. I would actually like to address a new point in my comments in that is primarily there have been a number of Planning Board, Village Board, Town Board meetings, this has been going on for a very long time, this particular development dating back to 2017 and bringing it back to the Planning Board. Residents, experts in the area and even Board members have spoken up and what we have heard consistently are a number of concerns. Concerns related to infrastructure some related to safety, quality of life and other related to the environmental impact of this particular development as it is proposed. This is the first Cluster subdivision to be built in the Village of Warwick since the new law was passed two years ago. So the decision of this Board will be setting a precedent for all future cluster subdivisions in the Village. We have to get this right for that reason. As of right now there are serious concerns with the DEIS, I personally don't believe that the DEIS should have been approved and that is from what I have heard and the research I have done and what we have heard from the residents and the expert. I will go as far as to say that the 2008 DEIS and FEIS which contains some of the same concerns should probably not been approved either. The Planning Board, the Village Board and the Town Board are accountable for the decisions that are going to be made about this development. Based on what I have heard I am requesting that this be sent back to square one and the FEIS not be approved.

Donna Haley-20 Oakland Ct. – I pass.

Mike Conklin – 45 Woodside Dr. – I pass also.

Mr. Aulen – That is the end of the list of speakers. I will now close the public hearing.

Mr. Gross – Can I speak please? I just got here. You know that is not proper.

Audience – Let him speak.

Mr. Aulen – On the advice of counsel I will allow him to speak. You should get here on time.

You have 3 minutes Mr. Gross.

Mr. Gross – I will respectfully ask if I can go further than that.

Mr. Aulen – You have 3 minutes.

Mr. Gross – At the end of the last public hearing you opened it up to additional people and I am at the very end so I am going to respectfully request that you let me make my points. I am going to start off by saying my name is Stephen Gross, 71 Colonial Ave., Hudson Highlands

Environmental Consulting and I am here to represent the neighborhood of Woodside Dr. and Sleepy Hollow Rd. I am going to start off by saying that the concept of clustering is an excellent concept that I fully support, I have recommended it plenty of times, it is an excellent way of preserving land in its natural state, reducing environmental impacts, reducing cost of

development and possibly even reducing the cost of housing. However, that is if it is applied correctly, in accordance with the Village Code this one however is not. The Village code requires that any submission for a Cluster Subdivision include certain information that includes slopes in excess of 15% and a Soils map. I made the point last month that you did not have the maps showing slopes in excess of 15% and in the interim period I went to the Planning Dept. and asked the secretary if there was something in the file and she could not find anything and yet that is a requirement in your Zoning Code. I took it upon myself to develop my own map of slopes in excess of 15%. The DEIS and the EAF all talk about how there was very little in excess of 15% and they acknowledged the slopes in excess of 25% but then say most of the property is characterized by slopes of less than 15%. This shows all slopes in excess of 15% on the property, the areas covered in red are the slopes in excess of 25%. The slopes covered in orange are those between 15% & 25%. Why is this important? 1) as I said you don't even have that information provided to you 2) the soils map that was provided indicates that most of the site outside the wetlands are occupied by mardin soils on B slope and C slope. A B slope is 3 to 8%, the C slope is 8-15% and that is all it shows and the DEIS goes on to say that they did soil testing that confirmed mardin and that it was suitable for development. However, as you can see from the slopes map a large, very large portion of the site exceeds 15% therefore the classification of these soils should have been mardin D or mardin E. In the soil survey MDD and MNE are both indicated as having severe limitations to all developments and all categories so that is not reflected in the DEIS. Secondly, the cluster provisions state that soils of 25% should be placed into the open space area, they should be placed in the primary conservation area and slopes of 15% should actually be in the secondary. So, when the map was drawn indicating the area to be preserved it should have automatically eliminated the entire area in red with adjoining orange areas obviously the wetland, this entire area and it did not, in fact you have this house sitting right on top of the red completely on the 25% slopes, you have all of these houses sitting on 15% and several other houses are on the red 25% slopes and in addition the cluster provisions state that when citing houses the houses should be cited 100 ft. back from the primary conservation area. So the primary conservation area is defined in this case as being 25% slopes and greater and the wetlands and every house that is cited on here in accordance with the zoning code should have been cited 100ft. away from all of these areas that were required in the zoning code to be placed into the open space area. There is no justification for the lot count to be increased to anything above the 28 unit lot count that was determined by the yield plan or in this case the approved subdivision plan. The code says that once initial density is established the total number of permitted dwelling units may be increase, not shall, may, and that put it as the discretion of the Planning Board not an as of right to the applicant. It may be increased to the maximum number of units that will fit on a parcel while maintaining all setbacks required. This plan that was presented to this Board is likely a misinterpretation of that part of the code. It does assume that this is supposed to be a as of right increase that simply requires the applicant to pay \$50,000.00 per unit fee. If that was the case there would be no purpose in having the cluster

revisions, you might as well just have 10,000 sq.ft. zoning and what can you put on the property. Obviously that is not the case here. Clustering is supposed to have benefits. The DEIS cites as supposed benefits increased setback from the wetland, it cited a range of 30 to 80ft. for adjacent housing but as I just stated the code says it has to be 100 ft. and 30 to 80ft. is not really a range.

It turns out that this proposed house is 30ft. and this proposed house is 80ft. and there are no other houses that abut directly so they are only referring to 2 houses. What it neglects to note is that this detention pond and this detention pond area at zero. Where he is showing detention ponds is completely removing all of the vegetation, all of the trees, re-grading, building up a berm and the berm is going right up against the edge of the wetland completely destroying the natural buffer. The DEIS goes on to say that one of the benefits of preserving the buffer is to preserve the scenic natural environment for birds and animals. It's bull, because it is being completely destroyed where these two detention ponds are and this road that is coming in is encroaching within 20ft. and you can see the length of the road. So, the DEIS is misleading and it only refers to the two houses, it doesn't refer to the two houses, it doesn't refer to other buffers being destroyed. By contrast in the original 28 lot proposal you have a house here with a 50ft. buffer, you have a house here with what I believe is a 90ft. buffer, you have a detention pond here I think is 80ft. away but I may be off on that one but the 28 lot plan in many cases has a better buffer and yet it crosses the wetlands in two places where as this plan crosses one but the buffer is actually greater in most instances in the 28 lot plan than the 45 lot plan. The bottom line is that the cluster provisions are in the zoning code because there is a perceived public benefit. Preserving land, reducing the environmental impact, this doesn't do it, there is no public benefit to this plan. This is one benefit to this plan that is to the applicant, it is to get him 17 more units, that's it. This plan should be rejected because it does not comply with the zoning code and it also creates more environmental impact and it is developing directly on 25% slopes. I think I will let my comments sit right there. I think I have said enough and I will be submitting a letter that will put everything I said plus a lot more in detail.

Freya Carlborn-43 Woodside Dr. – I spent two weekends walking around my neighborhood particularly Crescent and lower Woodside and I must have talked with all six of my neighbors and there was not one neighbor who was unconcerned about this proposed development. People are concerned about traffic; there is already traffic on Woodside Dr. and Crescent. Lots of traffic is used as a cutoff or detour, we have trucks whizzing by, and there wasn't one neighbor who is not concerned about traffic. Other neighbors that I spoke to were also concerned about the threat to wildlife, one neighbor mentioned a bat habitat is on the property and speaking from personal experience my husband and I lost our home to a disaster several years ago and we spent 1 ½ years looking for a home in Orange County and we decided to move to Warwick and to stay here because of the preservation fund and I am wondering what is happening when the preservation fund overlooks such a fantastic piece of property that is a wetland and is a refuge for wildlife. It seems to have been on the market for several years and nobody has paid any attention to it whatsoever, which is from my personal point of view. I have also talked to my neighbors directly on Woodside Dr. and they are extremely concerned about the threat of more flooding and water

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coming down because as we know, when you clear land to put developments in it creates a problem with run-off water. I am glad to see so many of my neighbors and if you would consider sharing your e-mail address there will be some pads outside.

A MOTION was made by Jim Patterson, seconded by Jesse Gallo and carried to close the public hearing. (5 Ayes)

Mr. Getz – The applicant provided an updated sketch plan. The plan had a couple of new elements in it including a proposed privacy fence.

Mr. Winglovitz – We have added a privacy fence along the parking lot and the adjacent neighbors.

Mr. Aulen – Why wouldn't extend out near the senior citizens?

Mr. Winglovitz – We could wrap it around the corner to the end of that lot, that is a reasonable request. We also show the houses across the street and we discussed with the Board that one of the neighbors had a concern about the line of the driveway and there house and as you can see it lines up directly between the two houses and not directly across from it.

Mr. Getz – The applicant has submitted a full Part 1 EAF Form for review and they submitted a Traffic Study prepared by Maser Engineering and that study focused mostly on Forester Ave. at the location of the site driveway and concludes that the project would not have a significant impact. I think we have also seen the letter from the Board of Trustees asking for an additional study at the intersection of Forester Ave. and Colonial. The report that we have mentions that intersection at one point in sort of a general statement saying "the increase in traffic near the site would be about 5% during the peak hour and that the 5% would be reduced as you get further away from the project. But it does not provide any detail numbers.

Mr. Winglovitz – I would just restate what their conclusion is and it is that we are basically 5% of the traffic in that area so we are not a large percentage of the traffic and as we get away from the project it will be even less traffic because people will be taking different roads so there should be less at the two intersections mentioned and with that small amount of traffic and their professional opinion is that they don't think an analysis of those intersections are warranted because it is such a small increase.

Mr. Aulen – I think that you should extend it as requested by the Village of Warwick Board of Trustees, it was a major subject that was brought up in a public hearing. I believe you were there.

Mr. Winglovitz – Yes, I think are initial instinct was there was not a lot of traffic at those intersections and the I think that the consultant confirmed it. I would like to hear everybody's opinion and see if there are any alternatives or does the Board entirely feel that...

Mr. Aulen – Does the Board have any comments?

Mr. Olsen – I agree with Mr. Aulen, the Village Trustees have heard those comments and I think it would be worthwhile.

Mr. Patterson – I would also like to add that there is a school on that road and I think that the hours or at least the evening hours that the survey was done does not represent the bus traffic that goes out of there at that particular time and I think you should also extend the hours. I think the morning hours are covered by it.

Mr. Winglovitz – Yes, the hours are based on what the highest peak on the street traffic is and it may not have captured the school traffic because that is not the highest peak hours.

Mr. Aulen – My understanding is that they only took the study for one hour at that particular time...

Mr. Winglovitz – Yes.

Mr. Aulen – and one hour in the evening?

Mr. Winglovitz – I think it may have been 2 hours.

Mr. Gallo – 7 to 9am and 4 to 6pm.

Mr. Winglovitz – Yes, 7am to 9am and 4 to 6pm.

Mr. Olsen – That doesn't catch the school very much. School is at different times.

Mr. Winglovitz–Correct and I think my point was that this is probably the larger peak and that is why they studied it earlier. We can ask them to address that.

Mr. Olsen – I am more concerned you saying that people are going off the street and taking side streets, there are not that many turns you can make, you can go down Park Ave. or Park Lane and that is about it.

Mr. Kennedy – We could debate it but I think the study will show that the initial study is correct..

Mr. Winglovitz – Yes, we just hate to have to spend another \$4,000.00 to study intersections to come to the same answer.

Mr. Patterson – Sometimes you just have to prove the negative.

Mr. Dickover – You need to keep in mind that this is a coordinated review and recommendations being made by other involved agencies have to be given a matter of deference by this Board. We have the Village Board requesting that this study be extended. The Board members have spoken on their desire with respect to this and I would probably suggest to you that adhere to the Boards request and extend the study otherwise you may have an EIS finding that might be subject to attack.

Mr. Winglovitz – Understood.

Mr. Getz – The applicant received a letter from NYS Office of Parks, Recreation & Historic Preservation saying that they have analyzed the information submitted and concluded that the project would not have an impact on Cultural or Historic Resources. I would like to request of the applicant for an update on the status with the other Boards involved.

Mr. Winglovitz – We have not been back to the Village Board since we were here last. We made our initial presentation to the ZBA. We made a presentation and had a hearing. We had another meeting with the Village Board at which time they told us they we needed to conclude SEQR, so we came back here.

Mr. Dickover – Did the ZBA conduct their public hearing?

Mr. Winglovitz – Yes.

Secretary – Yes and the public hearing was kept open.

Mr. Dickover – The general tenor of the meeting and the public comments if any were what?

Mr. Winglovitz – There was no significant public comment.

Secretary – There was one public comment.

Mr. Winglovitz – Yes and that was a gentleman from across the street and it was really regarding where the entrance would be in relationship to his house.

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Mr. Patterson – The exit or the entrance?

Mr. Winglovitz – I'm sorry, the exit.

Mr. Aulen requested a copy of the ZBA minutes of the Sept. 17, 2018 meeting.

Mr. Getz – The other comments we have talked about before 1) the projects construction would affect the existing parking lot that historically has been used by the American Legion 2) there are easement agreements we needed to allow Mechanical Rubber to use the property and lastly as the applicant goes further we will need more information on the details of the plan.

Mr. Winglovitz – We have submitted a Long Form EAF and we understand you want more information on traffic. Are there any specific comments that the Board had on the Long Form EAF?

Mr. Gallo – Is it Forester Ave Apts. or Kennedy Apts.?

Mr. Kennedy – It is 77 Forester Ave. LLC.

Mr. Winglovitz – The plan shows Kennedy Apts. but we can change it just to keep it consistent.

Mr. Getz – I think stormwater is an important topic. It is not going to be an easy site to meet all of the requirements because much of the site is being developed, has a significant slope to it and it does not have a clear cut receiving stream or pipe system to tie into.

Mr. Winglovitz – The stormwater is going to have to be accomplished with small rain gardens but primarily through underground storage. We don't have a significant increase in impervious since it is already mostly impervious, there is less than .2 of an acre of increase in impervious. We will be treating the stormwater and storing it underground. There is no drainage system directly on Foresterso what it looks like we are going to need to do is install probably a catch basin in the curb-line along Forester go down into the entrance to the park and across. Right now the existing water goes all the way down Forester along the curb across the entrance to the park and then discharges out to the stream so we are going to have to do improvements on Forester Ave.

Mr. Olsen – Did you say underground?

Mr. Winglovitz – Yes, storage will be underground.

Mr. Olsen – Where?

Mr. Winglovitz – It will be on the left side of the project or the north side because everything flows to that side.

Mr. Aulen – Do you have that design as yet?

Mr. Winglovitz – No, it was discussed at the last meeting, we are looking to proceed on SEQR with the acknowledgement that the details to our plan would be in compliance with the DEC requirements so that we can at least get in front of the Village Board for the Special Permit and then come back with all of the detailed engineering.

Mr. Olsen – The rain gardens will be where?

Mr. Winglovitz – They will probably be in the courtyard area in front of the units.

Mr. Patterson – Do we know about the utilities going to Mechanical Rubber and whether or not this project would interfere with any of the utilities?

Mr. Kennedy – I believe they only have water or sewer, one or the other so it should not interfere.

Mr. Winglovitz – We will locate it, contact them and confirm.

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Mr. Kennedy – They have septic so they have Village water and I believe it is on the west side of their property or the north side.

Mr. Olsen – Do they have gas?

Mr. Winglovitz – Obviously we will get it all marked out.

16 ELM ST.

SIGN APPROVAL

YESTERDAY'S

The Board reviewed the sign application.

The applicant was unavailable to clarify questions from the Board.

The Board unanimously agreed that the application should be re-submitted with the proper amount of information required on the application.

A MOTION was made by Jim Patterson, seconded by Karl Scheible and carried to adjourn the meeting. (5 Ayes)

Respectfully submitted;

Maureen J. Evans,
Planning Board secretary