

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

VILLAGE OF WARWICK  
PLANNING BOARD MEETING  
SEPTEMBER 21, 2017

The monthly meeting of the Village of Warwick Planning Board was held on Thursday, September 21, 2017. Present were: George Aulen, Bill Olsen, Jim Patterson, Jesse Gallo, Raey Webster, Village Engineer, Dave Getz and Planning Board attorney, Robert Dickover. Others present were: John Cappello, Ross Winglovitz, John Christison, Steven Gross, Patrick Gallagher, Gene Bowman and others.

A MOTION was made by Jim Patterson, seconded by Jesse Gallo and carried to accept the minutes of the August 17, 2017 Planning Board meeting. (4 Ayes) {1 Abstention – Raey Webster}

WARWICK COMMONS

SITE PLAN EXT.

STERLING BANK

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Mr. Cappello – My understanding is that there is a purchaser and the bank loan committee is just considering it and hopefully once it is approved that person would come here and advise you that they have committed to make the dam repair.

Mr. Getz – I received an e-mail today from Scott Braymer, who is the DEC representative that is dealing with the dam permit through the years. The e-mail was to Andrew Featherstone, the engineer that has appeared before us to describe the project and the message really is a request on the status of the project. So I just wanted to remind everyone that the DEC permit is critical and I believe it expires at the end of this year, is that correct?

Mr. Cappello – I am not sure...

Mr. Aulen – Yes, it does. It was renewed until the end of this year on December 31, 2017

A MOTION was made by Bill Olsen, seconded by Raey Webster and carried to grant an extension until December 22, 2017. (5 Ayes)

16 ELM ST.

SITE PLAN APPROVAL

16 ELM ST. LLC

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Mr. Getz – Several changes have been made to the site plan, they show some traffic improvements per the recommendations of the Maser Traffic Study for the Elm St. and West St. area. They have provided striping, a stop bar, stop sign and the sidewalk improvements all near the entrance. They have shifted the proposed location of the HVAC and generator.

Mr. Winglovitz – Yes, originally we had the proposed that the HVAC and generator would be behind the building and based on a discussion with our consultant who also advises us on noise, he recommended that we move them to the side so we have re-located them to the side of the building away from the rear and side property line.

Mr. Getz – Also recommended for the Village on that Maser Traffic Study was some striping on Elm St., a stop bar up by the intersection of West St. and some signage to limit the parking to improve vehicle turns and site distance. I spoke with Mike Moser, the DPW Supervisor and he said that the DPW is certainly willing to make those improvements with or without the project they would go ahead and do the work. Another change that was made on the site plan was to show a sidewalk at the front and they showed the detectable warning surfaces but they have not provided detail.

Mr. Winglovitz – It is the bumpy plastic pad.

Mr. Olsen – Where is that going to be?

Mr. Getz – The sidewalk by the driveway.

Mr. Winglovitz – We will specify that.

Mr. Aulen – This will do what?

Mr. Getz - They are required to alert the visually impaired that there is a crossing ahead. It basically tells a visually impaired person to stop. At this time we received the plans, the landscaping plans had not been updated showing the new location for the generator and HVAC equipment. Since my review we received an updated landscaping plan that shows the change.

Mr. Winglovitz – That is the only change and we did not produce it because there was no change to the landscaping and when we received the engineer’s comments we had them re-locate them on there.

Mr. Getz – So that makes the landscaping plans consistent.

Mr. Olsen – Is there going to be any screening or sound fence around it?

Mr. Winglovitz - Yes.

Mr. Olsen – You say privacy fence but...

Mr. Winglovitz – It is a solid fence and it will actually have an additional structure around it because of the handicap ramp encompassing the entire AC unit and so forth.

Mr. Gallo – What is the construction of the ramps?

Mr. Winglovitz – Wood or Trex.

Mr. Aulen – Your consultant indicated evergreen trees in the back and we had discussed earlier...

Mr. Winglovitz – Yes and I don't think he had the landscape plan when he decided that but he was recommending that and they already existed and that is in addition to the 6ft. high solid fence.

Mr. Aulen – At one time we had discussed the ability of an evergreen tree to grow without proper sunlight. Was that taken into consideration?

Mr. Winglovitz – Yes, so they are only shown where the open areas are and they will get sunlight.

Mr. Getz – A letter was provided to the Board by Dr. Martin who had comments on the environmental study, sample results regarding soil and ground water. She criticizes some of the results or the methods used to obtain them. I commented that the applicant should address her concerns and last week after I submitted my comments the Village did receive a response from William L. Going & Assoc., the firm that prepared the study and he provides responses to her criticisms and comments and in my opinion he seems to address them adequately and very well.

Mr. Aulen – Yes, it was a very thorough and accurate answer.

Mr. Getz – Concerns have been raised in writing and comments regarding noise, it is a big issue so the Board should discuss the issue so that they feel comfortable with what is proposed or if they feel other changes are needed. The applicant has made several changes to mitigate potential noise.

Mr. Winglovitz – Yes, after the site walk we moved the patio significantly forward toward the parking lot, we are enclosing the rear of the porch so that any dining that occurs on the porch will have an additional buffer, we have re-located the dumpsters and moved them further away from the property line and now we have done the additional re-location of the AC and generator to inside the handicap area. We have done several things based on comments from the Board.

Mr. Cappello – We also included the note with the hours of operation.

Mr. Aulen – And the patio and outdoors will not go any further than 11:00pm.

Mr. Cappello – Yes.

Mr. Olsen – And we have discussed the size of the speakers. What kind of speakers are you going to be using?

Mr. Winglovitz – I don't think they have been specified yet. But I envision little speakers next to the each table as opposed to having loud speakers...

Mr. Christison – Instead of putting one speaker to go all across the patio, if you put them close to the table they don't have to be loud because you have several across the table way.

Mr. Olsen – There was a comment about collection of garbage regarding the time. To make sure that the collection of garbage is during the daytime...

Mr. Aulen – It is on the drawing.

Mr. Cappello – These were recommendations of Phil Greeley who is an engineer who specializes in noise from traffic and noise reduction associated with traffic and various items so he had prepared a letter and those were his suggestions as to how to address the issue and the Village Code requirements.

Mr. Aulen – One of my concerns about the noise is that we received a letter indicating that no one can meet the Village's standard, can anyone explain that?

Mr. Cappello – It is an opinion of one person because of the background decibels and how it is measured. We sent it to Mr. Greeley just for that reason and his sense was until you do the measure and know what the background noise is at the certain times and to then be able to determine what or whether the noise is coming from the facility and until then you really would not know. It really depends on what the background noises are. If you interpret it the most conservative way as the one letter did, anybody who closes a car door or in any business within the Village which are all located within 200ft. of residences would be in violation. But we believe that is an erroneous interpretation of that. That is why Phil Greeley read it and suggested those measures for mitigation and even with those measures and mitigation as far as the speakers go, if it is measured and the speakers are above the ambient level, then the speakers will have to be adjusted or additional sound attenuation will have to be there or the speakers will have to be removed.

Mr. Aulen – So you are obviously saying that you are going to meet the criteria of the Village Law.

Mr. Cappello – Yes.

Mr. Olsen – Do we have the equipment to measure?

Mr. Aulen – No.

Mr. Olsen – What do we need?

Mr. Aulen – If the Village wants to buy a piece of equipment to measure this it would be about \$7,000 to \$8,000.00 and then you would need to train someone to use them. I looked into it.

Mr. Webster – What about on a contractual basis and the applicant would have to pay a fee for a one time evaluation?

Mr. Aulen – You can only evaluate it after it is in place. I understood the letters we received to be theoretical. Measuring in an office what the decibels are but you have to actually be on the property and see what the background noise is and one letter from a gentleman indicated that everyone in the neighborhood was violating that particular ordinance as he understood.

Mr. Olsen – Maybe Raey is saying that we could have a one-time evaluation after it is in operation.

Mr. Webster – A random check, in other words unannounced. I am just throwing the idea out.

Mr. Aulen – The applicant indicated that they were going to measure after it is in place. Are you asking for a second opinion?

Mr. Webster – I did not catch that part, but if they are going to do the measuring we would have to set the terms and conditions and be when the speakers are on outside.

Mr. Aulen – Yes and if they do violate it, it would have to be adjusted.

Mr. Webster – In the Resolution is it possible to approve the noise portion to be good for one year and subject to review? Like a one year conditional?

Mr. Gallo – Or a conditional based on satisfactory sound results.

Mr. Olsen – But that is after construction.

Mr. Aulen – The approval I would imagine is that they have to meet the Village standards and if they do not, they will have a problem.

Mr. Olsen – But the problem is measuring it.

Mr. Cappello – I think the reality is going to be that we can measure that and you have other Village businesses that you have recently approved and I would hope you would measure them the same way because there was an historic tavern that was just approved that is within 200ft. from a residential district but the point is while a measurement, and we will agree to a measurement, I think you are going to have a lot of people monitoring for you. It is like the one judge who said “you will know it when you see it”. You could have all of the machines in the world but if you are standing at the property line you are either going to hear it or not. So if it is loud and personnel observe that you can hear it, which we do not believe you will, then we will have to take the measures but the point is we understand especially as it relates to any speaker system that we would have to address it.

Mr. Christison – It also depends on who is operating it.

Mr. Olsen – That is true.

Mr. Christison – In my 32 years doing things correctly in the Village there is no reason for me to not do it correctly from here forward.

Mr. Gallo – It is not just speakers, it is HVAC and generators, conversation out on the porch, exhaust fans and stuff like that. It seems to me that the HVAC and generator have seemed to move closer to residences than it was, it appears almost 15ft closer in the new location.

Mr. Winglovitz – It is further from the property line which is what we tried to accomplish, it is back and shielded by the building.

Mr. Gallo – It does seem that is a better scenario for the residents up here but it is almost like with the dumpster being here, it just seems you are kind of focusing on this one side.

Mr. Winglovitz – That is really our only option, we can’t put it in the floodplain but we can put it back behind the building but it seemed like a better location because it is further from the property line, the building shields it from a number of residents on this side, the ramp itself also provides additional shielding in addition to the fence that will be installed. I believe there are a number of benefits to putting it there.

Mr. Olsen – Do you have delivery hours?

Mr. Christison – Most of my delivery hours are from 11am to 5pm. In my 32 years and I can’t remember ever getting anything after 7pm and that is if a truck breaks down or something. I don’t open until 11am so deliveries don’t start until 11am and done at 5pm.

Mr. Olsen – How many deliveries do you expect?

Mr. Christison – It depends on the day and how busy we are. In the fall I receive more deliveries but it is basically Monday through Friday. It is a truck that pulls on the side of the building, basically shuts it off and comes in with the product and comes back out.

Mr. Gallo – The evergreens on the landscaping plan, are these in addition to what was proposed?

Mr. Winglovitz – No landscaping has changed. The only thing that has changed is the location of the AC unit and generator. Mr. Greeley did not have the benefit of the landscaping plan when he recommend the re-location and he recommended that we put some evergreen, which was already on the plan.

Mr. Olsen – Is there an indication of what species?

Mr. Winglovitz – It is all detailed on the plan, the trees, the size, the species.

Mr. Olsen – And these are appropriate to grow in that area?

Mr. Getz – Yes.

Mr. Olsen – Do you replace if it dies?

Mr. Getz – We can make that a requirement.

Mr. Christison – Hopefully they will not die but if they do I will replace them.

Mr. Getz – We received the revised archeological report. As you know there have been several updates to the cultural and archeological report. We were waiting to hear back from the State and the State OPRHP with their recommendation that after reviewing the report,” that no further work is needed”.

Mr. Aulen – As long as there isn’t any changes in the site plan.

Mr. Getz – Correct. If they propose to disturb new areas that could open up that question again.

Mr. Aulen – The areas you are disturbing are not in the Floodplain and you are doing some paving.

Mr. Winglovitz – Correct. If we decided that we were going to put another building that would be disturbing a new area.

Mr. Getz – There is a proposed drainage easement on the property and the Village recently installed a storm pipe across the property which heads down towards the railroad tracks. The applicant has agreed to provide the Village with an easement and at some point we will need to have the legal description worked out for that easement.

Mr. Olsen – The plan shows “replace existing gate”, you are going to have a gate there?

Mr. Getz – It is the fence gate.

Mr. Winglovitz – The existing gate is too narrow for the new driveway.

Mr. Olsen – So you will have a gate that you will open and close at night?

Mr. Christison – Yes, for security reasons.

Mr. Olsen – And the fence will be all around the property line.

Mr. Christison – Yes, we are going to keep the existing fence along the tracks.

Mr. Olsen – Do they have to show what the gate is going to look like?

Mr. Winglovitz – Currently it is all chain-link and we will maintain the chain-link and switch to privacy as we show on the plan.

Mr. Webster – If you have a gate there what about deliveries?

Mr. Christison – My kitchen crew gets there roughly at 9am...

Mr. Webster – So the gate would be open.

Mr. Christison – Yes and I will make arrangements for the Police and Fire Dept. to have keys to the gate.

Mr. Aulen showed a rendering of the building that was submitted to the ARB. Do we need to review the Floodplain application?

Mr. Dickover – Mr. Getz, is the plan reasonably complete that we can do that at this point?

Mr. Getz – Yes, I think it is.

Mr. Aulen – There are no addition or changes in this plan that are coming forth is there?

Mr. Winglovitz – No, not unless you have comments tonight.

The Board reviewed the revised Sept. 7, 2017 Long EAF part 1.

Mr. Getz – The name on the EAF and the name on the Flood Plain application are different. Are the names on the EAF correct?

Mr. Winglovitz – Yes.

Page 12 of 13 E.2 (o) – Does the project contain any species of plant or animal that is listed by the federal government on NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species?

The applicant answered yes, that the site was identified as having potential habitat for Indiana Bat and that an onsite inspection identified only one tree as a potential roost tree. This tree will only be removed between Oct. 1<sup>st</sup> and March 31<sup>st</sup>.

Mr. Getz – Is there a note on the plan regarding that?

Mr. Winglovitz – I don't know but we can add one. The significance of that is that they do not roost in the tree.

The Board had no comments on part 1.

The Board reviewed the revised Sept. 7, 2017 Long EAF part 2.

Page 4 of 10 7- Impact on Plants and Animals

Mr. Winglovitz – This identifies with Part 1 E.2.m.-q, endangered species, so that answer should be yes.

Mr. Getz – Yes, because of the roost tree.

Page 8 of 10 14-Impact on Energy ( c )

Mr. Getz – What was your estimate of electricity used per year?

Mr. Winglovitz – 70,000 kilowatts per year.

Page 8 of 10 15 – Impact on Noise, Odor and Light (a) The proposed action may produce sound above noise levels established by local regulation – The Board answered No.

Audience – Mr. Gross – Yes, it gets covered in part 3 if you say yes. Check it yes and cover it in part 3.

Mr. Aulen – The Board answered No.

Mr. Gross – Does everyone agree to that on the Board or is it just the Chairman?

Mr. Patterson – The answer is No and the Board agrees.

( d ) – the proposed action may result in light shining onto adjoining properties

Mr. Olsen – According to the map it will not, so it would be small to none.

(e) – The proposed action may result in lighting creating sky-glow brighter than existing area conditions.

Mr. Aulen – There is sky glow across the creek...

Mr. Olsen – Yes but theirs.

Mr. Getz – Are the lights you are proposing LED?

Mr. Winglovitz – They are light sky friendly with shielded fixtures.

Mr. Olsen – How tall are they? Lower might be better I think.

Mr. Winglovitz – 20 ft.

Mr. Olsen – Do they need to be that high? Can they be lower?

Mr. Winglovitz – We went through the analysis and it shows how they are shielded and the light spillage based on the lighting plan.

Mr. Getz – If you go with shorter poles you would need more of them, so that is a trade-off. So the answer to (e) is No or small impact.

The Board agreed.

Page 10 of 10 – 18-Consistency with Community Character – The proposed project is inconsistent with the existing community character.

Board – No.

Audience – Mr. Gross – You are opening yourself up to a lawsuit.

Mr. Getz – That completes part 2 of the Long EAF.

Mr. Aulen – Does the Board agree with the Environmental Impact?

Board – Yes.

Mr. Dickover – Based upon the Board’s responses in part 2. The Board could entertain a motion to declare a Neg. Dec. in the absence of any significant adverse environmental impacts.

A MOTION was made by Jim Patterson, seconded by Bill Olsen and carried to declare a Negative Declaration with no significant environmental impact. (5 Ayes)

The Board reviewed the Flood Plain Permit.

Mr. Getz – The applicant on the permit is correct, it is the name of the owner that disagrees with the EAF.

Mr. Olsen – Who owns the property?

Mr. Christison – Frank Petrucci

Mr. Winglovitz – Mr. Petrucci signed the proxy.

Mr. Dickover – The original that is filed in the office needs to be corrected.

Mr. Getz – The address is correct, it is just a different name. The proposed activities are excavation, grading, water and sewer system.

Mr. Olsen – They will not be changing the water course.

Mr. Getz – No, the water course is actually off-site. Is the Village copy of the application signed and dated.

Secretary – Yes, it is signed and dated 4/12/17

Mr. Getz – They have checked off that the proposed project is in Zone A with elevation and that is based upon the FEMA maps and that is correct for this area. Also checked that the project is on a site that includes a Floodway. The base flood elevation which is the 100 yr. FEMA elevation is 516.5 ft. and they list the source document as the Flood Insurance Rate map which looks appropriate. The first floor elevation shown to be 523.0, does that still agree with you?

Mr. Winglovitz – Yes.

Mr. Getz – The structure will be flood proof at elevation 514.0.

Mr. Winglovitz – The building itself will be outside the flood plain...

Mr. Getz – So that doesn’t really apply.

Mr. Winglovitz – Correct.

Mr. Getz – So we should cross it out. It also indicates that elevation to which compacted fill is to be elevated, it says elevation 517...

Mr. Winglovitz - Just below the outside patio there is a little area that is 517. There is a little fill in the flood plain but it is balanced out because the net is a significant reduction.

Mr. Getz – And that is allowed under FEMA regulations.

Under ACTION the Board checked number 1 – Permit is approved, proposed development in compliance with applicable management standards.

A MOTION was made by Bill Olsen, seconded by Raey Webster and carried to approve the Flood Plain Permit application. (5 Ayes)

A MOTION was made by Jim Patterson, seconded by Raey Webster and carried to schedule a public hearing on October 19, 2017. (5 Ayes)

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

Respectfully submitted;

Maureen J. Evans,  
Planning Board secretary

