

CHAIRMAN: JAMES PATTERSON
MEMBERS: GEORGE AULEN, WILLIAM OLSEN, JESSE GALLO & KARL SCHEIBLE
Alternate: Kerry Boland

VILLAGE OF WARWICK
PLANNING BOARD MEETING
SEPTEMBER 10, 2019

The monthly meeting of the Village of Warwick Planning Board was held on Tuesday, September 10, 2019. Present were: Jim Patterson, Karl Scheible, Bill Olsen, Kerry Boland, Village Engineer, Dave Getz and Planning Board attorney, Robert Dickover. Others present: Jay Myrow, Armando Ferrier, Keith Woodruff, Ron Charlton, Beau Kennedy, Jason McGovern and others.

Mr. Patterson introduced himself as the new Planning Board Chairman indicating that Mr. George Aulen would be continuing as a full-time member of the Board.

The Board recited the Pledge of Allegiance.
The Chairman acknowledged correspondence received.

The Board chose to table the acceptance of the August 13, 2019 Planning Board minutes until October 8, 2019 in order to review the entire 15 page document.

VILLAGE VIEW EXT. OF SUBDIVISION APPROVAL VILLAGE VIEW

A MOTION was made by Bill Olsen seconded by Karl Scheible and carried to grant an extension of the 28 lot subdivision preliminary approval for Village View until Dec. 13, 2019. (4 Ayes)

WARWICK COMMONS EXT. OF SITE PLAN APPROVAL STERLING BANK

A MOTION was made by Bill Olsen, seconded by Kerry Boland and carried to grant an extension for Warwick Commons site plan approval until December 13, 2019 (4 Ayes)

Mr. Getz - The OCDP has brought up and the Board has had discussions regarding Affordable Housing and after reviewing the Village Code and the Zoning Code, I do not see any requirement that it is a strict requirement based on Village rules.

Mr. Dickover - You need to remember that this is really 2 applications and we are considering them together. 1) Site Plan approval and 2) Subdivision approval. On the Site Plan application the OCDP 239 Referral came back with a binding recommendation that Affordable Housing be imposed on this project at 30% of the units. That went to the Village Board for a Special Use Permit application and the Village Board deferred with respect to it and for their purposes to this Board. There is no provision in the Village Code for providing affordable housing on site plan applications but there is on subdivisions. If affordable housing is not going to be required by this Board and the project is going to be approved without it you need a super majority vote which for your purposes it is the majority plus 1, so to approve this project without affordable housing it would require the affirmative vote of 4 members. The OCPD on the subdivision application commented back that it was a matter of Local Determination and that imposes no special voting requirement on this Board, so it is simply the majority of the Board. Back to the affordable housing, it is my understanding that since the time that the County last studied the affordable housing needs within the Township of Warwick, it pre-dated the Liberty Greens project. Liberty Greens has now been built out and provides some affordable housing which may address the requirements. If this Board were inclined to not impose affordable housing on this project, I would submit to you the two reasons of not doing so is 1) It is not provided for in your Village Code; 2) Some of the affordable housing needs have been addressed by the Liberty Greens project.

Mr. Myrow - Based on all of the financials and economics we can't afford to carry affordable housing as it might be defined... that is the problem, since you don't have a regulation we don't know what the definition would be but at this point it would be an enormously difficult economically to provide it. At the Village Board meeting the Village attorney noted that it is not provided for in your Code so we are asking this Board to proceed accordingly.

Mr. Getz - The applicant provided some information on the demographic based on the number of units and the data indicates that you can expect approximately 8 school age children to live on the property once it is constructed and that is K-12. We discussed possible sidewalks across on the opposite side of Forester Ave. but there is nothing there now. In my opinion the impact from this project on the population of children at Park Ave. school is minimal and I do not see any need for sidewalks across the street.

Mr. Scheible - If every child is bused it is likely that the pick-up would be down by Memorial Drive.

Mr. Getz - Certainly in that area.

Ms. Boland - My understanding is that if they are that close to Park Ave. they would be expected to walk, that there would not be buses under a half mile or mile from school.

Mr. Scheible - Has our busing rules changed? It was at one point that everyone gets bused or at least has the option.

Mr. Olsen - Do you think the 8 children is an appropriate number?

Mr. Getz - I think so. In 1 bedroom apts. the chance of having school age children is very minimal and it is a mix of 1 and 2 bedrooms.

Mr. Myrow - And that is 8 for K-12 and if you factor that Park Ave. gets less than 5 children.

Mr. Patterson - Last month we discussed the fact that any of these upgrades would be off-site.

Mr. Dickover - They are off-site improvements.

Mr. Getz - Documents for the proposed easements and or licenses must be finalized. I believe it was stated that easements would be needed for stormwater and sanitary sewer across the American Legion...

Mr. Woodruff - For the Legion property it is just stormwater and that is just a continuation to pick up the stormwater along Forester and to also discharge it into the Waywayanda Creek.

Mr. Getz - So there are no easements needed for the water or sanitary sewer?

Mr. Woodruff - Not for the Legion property.

Mr. Getz - The one area they have addressed very well because of our concerns is the area where you pull into the property on the right hand side is a residential property abutting the driveway they have provided more information on lighting that will have a severe cut-off. The lighting and landscaping plans have been updated to show better protection for that neighbor.

Mr. Olsen - How tall is the fence?

Mr. Woodruff - 6ft.

Mr. Patterson - Getting back to the Affordable Housing, we have 3 members here tonight and 1 alternate and if we were to have a full Board would that change, how does that work?

Mr. Dickover - You are still required to have an affirmative vote of 4 of those members.

Mr. Myrow - Or an affirmative vote of the 4 members tonight.

Mr. Olsen - My major concern is stormwater, I think it is the most important thing of this project.

Mr. Getz - They have been able to take advantage of the fact that most of the site is already impervious. They are providing stormwater measures for water quality and quantity. The Village requires that you go 10% better over existing conditions and their design does that.

Mr. Olsen - The quality is improved by the, what do you call those things that...

Mr. Getz - Bio-retention.

Mr. Woodruff - The Bio-retention in the courtyard that is going to have the filtering effect for the rooftops, then there is an underground detention system with a hydro-dynamic separator which creates a little vacuum and the small sediments filter into the bottom, it is routinely vacuumed out.

Mr. Olsen - Who is responsible for cleaning it out?

Mr. Woodruff - The property owner.

Mr. Olsen - Do we have an easement that can be that if the Village has to do it sometimes if it is not working 10 years from now?

Mr. Dickover - The document would be a Stormwater Management Facility Agreement that we would impose as a condition to this approval that the applicant have that prepared, submit it for approval and file it. It is basically a Deed Restriction.

Mr. Getz - In NYS the DEC plus the manufacturer of that hydro-dynamic has specific guidelines to follow for maintenance...

Mr. Olsen - This agreement would then say that if the Village has to do the work it could send the cost back to the owner?

Mr. Dickover - Yes.

Mr. Patterson - It would be logged with our DPW?

Mr. Dickover - It is typically filed in with the Building Dept. with the maintenance program that is called for so copy could be provided to the DPW but the Building Dept. has oversight over your site plan conditions so it belongs in the Building Dept.

Mr. Olsen - How does it get tested that it is not maintained? What would be the indication that it is not being maintained?

Mr. Getz - The Village can do an inspection at anytime, just open the lid on the separator and if they see excessive debris caught or if you see cloudy water leaving the system as it is going to the pipe.

Mr. Dickover - The agreement also calls for regular inspections and maintenance of the facility.

Mr. Getz - I believe that a report is to be filed with the Village that summarizes what was done.

Mr. Myrow - We will be contracting with a party that is typically how it is done.

Mr. Patterson - To maintain it.

Mr. Myrow - Yes.

Mr. Dickover - From my standpoint I think the project is now ready for a decision by this Board.

Mr. Getz, have your comments been addressed?

Mr. Getz -Yes, the comments I have now are for notes but the design is finalized.

Mr. Dickover - There are two decisions, the subdivision approval with no need for a super majority vote and the site plan approval which will require the affirmative vote of all 4 members this evening.

Ms. Boland - Do we have more information from the County about how they determine the 30% and what the basis of their calculation was, would they re-calculate the amount based on new properties...

Mr. Dickover - That would require a new study for the requirements or the need for affordable housing. Whether or not the County will undertake that or not or has since the time, I don't know and I don't have it in my possession any information that would answer any of your direct inquiries.

Mr. Olsen - The Mechanical Rubber encroachment has been take care of right?

Mr. Myrow - Yes, we have given them an easement to maintain that encroachment for so long as it exists along with the monitoring well.

Mr. Scheible - I am still a little confused about the County's requirement of the affordable housing.

Mr. Myrow - It is basically a suggestion.

Mr. Scheible - Mr. Dickover describes it more as a binding...

Mr. Dickover - A binding comment, the only way not to do it is by a super majority vote.

Mr. Scheible - To approve it without the requirement of affordable apartments we would need the super majority.

Mr. Dickover - Yes. If the Board does impose it, it will require some legislation from the Village as to how to manage it and to what the requirements are for affordable housing, right now they only have them for subdivisions and there are no regulations for site plans. If the Board were to

impose that requirement on this project we will need to go back to the Village Board and get some legislation to deal with it.

Mr. Myrow - If it is not in your Code today I don't think you can impose it in the hopes that the Village Board may create legislation to that effect. I think you are governed today but what is in your Code and I am not sure how you would impose an obligation that is not basically set forth, because there is no guidelines, it is basically a guess. If you were to say that you are required to provide affordable housing, right now you are struggling with what do the County mean? Are they going to update? If there are no guidelines and no regulations I don't think you can impose something that does not exist. That is what troubles me when the County does this because the only thing that is binding about what they do in the 239 is to make a recommendation and the only thing they do when they don't say local determination is they kick you into a super majority, that is all it is. It is basically a comment. It is my guess that they made this comment without looking at the Village Code to see whether or not it could be imposed. They do not have jurisdiction to decide anything here and the practically and reality is I don't see how you can impose something that is not in the Code. These are 1 & 2 bedroom types of units that can generally can provide for a more affordable housing option. I think by definition a rental property does provide a somewhat affordable housing option.

Mr. Patterson - Did you do the math as far as trying to figure out what number it is that you are going to get these apts. for versus what the County wants?

Mr. Charlton - We don't really know but we think around \$1,500 or \$1,600, that is basically what a one bedroom apt. goes for but that is also with individually metered for electric, cable and phone and the County wants an all inclusive. There is just no way to track all of this.

Mr. Patterson - There number is \$1,300 and you are around \$1,500 without utilities...

Mr. Charlton - Again, no prices have been set, it will basically be a market price and comparable. I know Park Lane goes for \$1,100, there are affordable options.

Mr. Scheible - Is that \$1,300 the County's calculation? What do they base their calculations on?

Mr. Patterson - Median income.

Mr. Dickover went through the draft Resolution conditions 1-14, Special Conditions 15a-e -19. The reason for #15 is that the parcel is in the Town and in the future someone will want to develop and use that parcel and get access to it across the Village parcel and your concern should be what level of service is that going to require? Is it more that what is presently being used and if it is they will have to come back to the Board for the expanded use and level of service on that driveway so you retain jurisdiction to review that future use in the Town parcel.

Mr. Getz - If they make an application to the Town Planning Board for a change on the Town parcel will the Town be sure to notify the Village Planning Board?

Mr. Dickover - That map would show access across this parcel and so you would be an involved agency for SEQR purposes and then you would make that Board aware of this requirement. I suggest a note to that effect be placed on the plan.

Mr. Olsen - Can there be more traffic on the access in the future?

Mr. Myrow - No, it is of public record that the parcel can only be accessed for 50 cars and 6 trucks. If something was proposed to the Town Planning Board with 200 cars & 50 trucks a day, they would see that they can't grant it. I think there is an inherent protection and it will be part of the public record and they will be prohibited from granting a use that will exceed 50 cars & 6 trucks per day.

Mr. Dickover - Any increase in the level of service would have to come back to this Board.

A MOTION was made by Bill Olsen, seconded by Karl Scheible and carried to grant Site Plan approval and Minor Subdivision approval accepting the Resolution with conditions prepared by Planning Board attorney, Robert Dickover for a 40 unit apartment building consisting of 28-2 bedroom units and 12-1 bedroom units at 77 Forester Ave. to Forester Ave. LLC. (4 Ayes)

A MOTION was made by Karl Scheible, seconded by Kerry Boland and carried to adjourn the meeting. (4 Ayes)

Respectfully submitted;

Maureen J. Evans,
Planning Board secretary