

CHAIRMAN: JAMES PATTERSON

MEMBERS: WILLIAM OLSEN, JESSE GALLO, & KARL SCHEIBLE & KERRY BOLAND

VILLAGE OF WARWICK  
PLANNING BOARD MEETING  
SEPTEMBER 8, 2020

The monthly meeting of the Village of Warwick Planning Board was held on Tuesday, September 8, 2020. Present were Jim Patterson, Jesse Gallo, Bill Olsen, Kerry Boland, Village Engineer, Dave Getz and Planning Board attorney, Robert Dickover. Others present were: Jay Myrow, Ben Silber, Kirk Rother, Susan Roth, Ken Pinkham, Robert Kennedy, Ron Charlton, Nancy Sardo, Mr. and Mrs. Mahr and others.

The meeting was held in Town Hall.

The Board recited the Pledge of Allegiance.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo, and carried to accept the minutes of the June 9, 2020 Planning Board minutes. (4 Ayes)

A MOTION was made by Bill Olsen, seconded by Kerry Boland, and carried to accept the minutes of the August 11, 2020 Planning Board meeting. (3 Ayes) { 1 Abstention – Jesse Gallo }

WARWICK COMMONS            EXT. SITE PLAN APPROVAL            STERLING BANK

The Board reviewed a letter submitted from the applicant requesting a 90-day extension and a letter with a Planning Board submission update.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo, and carried to extend the application until November 11, 2020 (4 Ayes)

A MOTION was made by Bill Olsen, seconded by Jesse Gallo, and carried to amend the motion to extend the Warwick Commons extension to December 9, 2020. (4 Ayes)

The applicant submitted a letter requesting a 1 year extension.

Mr. Patterson- Any plans to break grounds soon?

Mr. Kennedy – We are working on the bidding process now, so hopefully early Spring.

A MOTION was made Kerry Boland, seconded by Jesse Gallo and carried to extend the site plan approval for 77 Forester Ave. until September 10, 2021. (4 Ayes)

The applicant submitted a letter requesting a 90-day extension.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo, and carried to extend the approval until December 9, 2020. (4 Ayes)

Mr. Myrow – I believe that the Finding Statement has been drafted and available for review and so I am asking the Board to adopt the Finding Statement.

Mr. Dickover – The Finding Statement has been out in circulation for some time now with a 10-day comment period and I am not aware of any comments that were received from any of the other agencies that are involved. I have drafted a proposed Resolution adopting the Statement of Findings for the Board’s consideration this evening should you choose to entertain it.

Mr. Dickover read the draft resolution to adopt the Finding Statement for Village View.

A MOTION was made by Jesse Gallo, seconded by Bill Olsen, and carried to adopt the Finding Statement and the Resolution prepared and read by the Planning Board atty. (4 Ayes)

Mr. Olsen – We received a letter from Elizabeth Cassidy, do we have any comment or response to her? It says that incentives or bonuses should not be applied in this type of application. I think this is an important thing that we should discuss.

Mr. Dickover – The issue raised in Ms. Cassidy’s letter are in my opinion questions for the Village Board. It strikes a concern that there is no legal foundation in the state of New York for the Village to impose density bonus fees on the applicant. This issue was raised by her previously during the DEIS or the SEIS stage of your proceedings. The issue has been presented to the Village attorney and the applicant’s attorney is also aware of it. I do not believe it is an issue for this Board. You cannot impose density bonus fees if you wanted to or could you amend

them if you wanted to. Again, I believe this is an issue for the Village Board to address. I do not believe that it affects your SEQR determinations or findings, it is not an environmental question, beyond that I do not think I should comment further.

Mr. Patterson – Have you spoken with the Village attorney about this? Is the Village attorney aware of this?

Mr. Dickover – I have not spoken to him directly, but I have seen some correspondence.

Mr. Olsen – Can we make our final decision on this in the next month or so with this outstanding?

Mr. Patterson – Those questions are not up to us to make a decision. It does not apply to our decisions.

Mr. Mahr – Thank you for bringing it up.

28 CHURCH STREET

AMENDED SITE PLAN  
APPROVAL

CONVERGENT  
ENERGY

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Mr. Pinkham – We had a discussion about the aerial instead of going sub-surface and we decided to put the pole locations on the southside of the building.

Mr. Getz – At the time I wrote my review letter dated Aug. 27, 2020 we had had no response from the Fire Dept. since then we have received a response via e-mail saying that the plans were reviewed and there are no comments or concerns with the application. The OCDP issued a review letter and their concerns are as follows: 1) Environmental Constraints mentioning that the Waywayanda Creek which is a protected trout stream is near the proposed construction site, the site may contain suitable habitat for the Indiana Bat and potentially the Bog Turtle, the property is within the floodplain and the floodway by the Waywayanda Creek. However, in summary they state that the proposed project should not have a substantial impact on any of these resources and I agree. Although the bat question may need to be addressed I believe there would be restrictions on the time of year to remove certain trees. 2) Decommissioning Plan, we have also addressed that the applicant should submit a decommissioning plan for the facility. 3) Emergency Operations Plan, the applicant shall develop an Emergency Operations Plan, (EOP) for this facility. A copy of the EOP shall be provided to the system operator, the local fire department and the Village of Warwick Building Inspector. This is very important, the Board has asked questions about safety and potential hazards to the environment or to people as a result of this construction and operations with this facility. It is an important we get more specifics on the Emergency Operations.

Mr. Pinkham – As far as the decommissioning plan, I will get in touch with Convergent and essentially get an idea. I have worked on cell tower decommissioning project but never batteries so it is new territory for me. So I will need to contact Becky from Convergent in preparing this. I also you are associating costs with this decommission and I will need to speak with Becky regarding costs as well.

Mr. Getz – A few weeks ago the applicant has requested a determination from the Building Inspector whether the use is permitted in the LI zone. As far as I know the Building Inspector has not responded, I think he is waiting on information from the Village attorney. The applicant has

updated the plans to show the limits of the existing paved parking area behind the building and added some other details to address our previous technical comments. With regard to the fence height, the question was raised on whether or not they would require a variance but the Building Inspector has indicated that the National Electric Code requirements supersede the Village's zoning and that the 7ft. fence would not need a variance. At the last meeting we discussed how this new battery facility will connect to the grid and the Board requested to the extent possible to make those connections underground. Can you go into a little more detail about what you are showing.

Mr. Pinkham – One of the reasons we decided to go with the overhead is because we have water mains and hydrants and we really didn't want to impact that.

Mr. Olsen – Where are those water mains and hydrants?

Mr. Pinkham – On the southside of the building. There are 2 hydrants and we are afraid that trenching in that area might cause some type of problem with maybe the fire suppression, hydrants...

Mr. Getz – There are also deed restricted areas shown on the map. In the cover letter Mr. Griegs mentioned the amount of ground disturbance that would be possible to go sub-surface.

Mr. Olsen – The idea of having this battery storage is to provide back-up in case there is a loss of power and typically aerial lines get knocked down if it went underground there would be more extra security.

Mr. Pinkham – My only concern there again is the conflict between the hydrants, water service and trenching in that area and if we were to go further south with the underground, we would be 100 yr. old flood plain.

Mr. Patterson – So at a certain point, they would have to go up.

Mr. Olsen – You have lines above ground in the front, are you connected to that?

Mr. Pinkham – Yes, we are actually connecting to those poles in the front.

Mr. Patterson – Are they required to avoid the 100 yr. flood plain?

Mr. Getz – No I don't believe that would be an absolute requirement to avoid that.

Mr. Patterson – I do think we have to worry about the deed restricted areas.

Mr. Getz – Yes.

Mr. Patterson – But that is past the front of the parking lot.

Mr. Olsen – Where is the deed restricted areas?

Mr. Getz – On the first sheet there are 2 areas near the lower level that are shaded in gray, it says deed restricted/sewer manhole area.

Mr. Pinkham – There is a proposed utility pole and then we go aerial to an existing utility pole.

Mr. Getz – It does appear that if you follow the same route underground you would avoid those deed restricted areas and the flood plain although that is not a significant constrain...

Mr. Pinkham – We could probably have that last pole that we have proposed going aerial at that point or underground.

Mr. Olsen – The existing pole in front of the parking lot

Mr. Pinkham – There is an existing pole there but looking at the drawings it is running to the southeast into Veterans Memorial Park.

Mr. Getz – Perhaps the plans could include a little more detail and show where the existing waterlines are. What depth would they bury cables at for this purpose?

Mr. Pinkham – I know we don't have to worry about frost depth...

Mr. Patterson – They are encased in concrete, correct?

Mr. Pinkham – Yes.

Mr. Olsen – If the aerial wires get knocked down, who is responsible in the middle of an emergency? Is it O & R? Does O & R have the ability to come in quickly and fix them or not?

Mr. Pinkham – I don't know whose responsibility it would be at that point. But I believe it would be O&R running in that easement.

Mr. Olsen – So they have an easement to get onto the property?

Mr. Pinkham – We are constructing within the O&R easement.

Mr. Getz - There is an existing 100ft. wide O&R easement along the edge of the property so most of the proposed transmission lines are in it if not all of it.

Mr. Olsen – You guys are located up in Canada and your people will not be able come down and fix it if one of the aerial wires got knocked down.

Mr. Pinkham – Again, I will have to speak with Becky from Convergent about the outside of the O&R easement because I believe that the maintenance of these polls would be the responsibility of O&R. I can verify that though.

Mr. Olsen – I would like for you to see if you can get them underground.

Mr. Pinkham – Sure.

Mr. Patterson – Do you actually have a contract right now with O&R to build this?

Mr. Pinkham – I do not know, again that is a question for Becky from Convergent. I am just working on the site plan.

Mr. Patterson – I had the impression that this was a proposal that they would be providing to O&R.

Mr. Pinkham – I believe Becky had stated that at the last meeting.

Mr. Patterson – Is O&R interested in this?

Mr. Pinkham – From what I understand they are very interested in this site.

Mr. Patterson – In the site or the technology?

Mr. Pinkham – To have this to provide power in case there is a black out or brown out or any sort of significant power outage. So, I think they are very interested in this but I am not privy to...

Mr. Getz – I wonder if O&R prefers the lines underground? It would be good to get a reaction from them.

Mr. Patterson – I agree, especially if they must maintain that site.

Mr. Pinkham – I did have a discussion with Becky about the aerial and she more or less eluded that O&R wants poles.

Mr. Getz – If you could get something in writing from them so the Board can see what they prefer.

Mr. Pinkham – Sure.

Mr. Patterson – And the reason for it.

Mr. Getz – A decommissioning plan with cost estimates should be submitted to the Village and once we have all of the information, we can discuss the site plan checklist and the EAF. I don't believe we have received an official response on the use.

Mr. Dickover – My suggestion is to renew the request to the Building Inspector, maybe he can prompt the Village attorney to assist him.

Mr. Pinkham – I will be in touch with Becky. I know we need a discussion about the aerial as opposed to underground and confirm that O&R wants aerial and get that information over to you.

Ms. Boland – Regarding decommissioning, I would like to know that in the unfortunate event that the company goes bankrupt what happens to the site?

Mr. Pinkham – In my experience with a lot of projects there is normally a surety bond placed on it and in place for the decommissioning.

Ms. Boland – I would like to say that this is my third request for safety information. They should have their own materials about what they do in the event of failure. What happens if the wires go down and the electricity goes out, how would the equipment remain cooling in the canisters? It is in a 10-year floodplain, what happens if there is a flood? Or a fire?

Mr. Pinkham – The equipment is not in the floodplain...

Mr. Getz – That is right it is actually

Ms. Boland – OK, a tsunami, what happens? Presumably, the company has explanations for these things, I take them.

Mr. Pinkham – As far as the floodplain issue, we are at the 100 yr. floodplain. The decommissioning, if they go bankrupt, I am it would be insured, and the Village could require a bond issue which would cover that.

Ms. Boland – I appreciate your insight, but I would also like the information directly from the company.

Mr. Olsen – Floods are happening here in Warwick and all around the world so if a flood did come what would happen?

Mr. Pinkham – I couldn't exactly say. You could probably look at the leak response. We had submitted plans from Spill Prevention Leakage and all of these units are self-contained so...

Mr. Olsen – Are you saying that if it did get flooded they are still self-contained?

Mr. Pinkham – Correct.

Mr. Olsen – Can lithium melt?

Mr. Pinkham – Let me discuss that with Becky, I know she sent over Leak & Spill Prevention Plan as well as Fire Suppression so I will get back to you after speaking with her. If you like we could show the 500 yr. floodplain on the plan and we will be submitting a decommissioning plan for the next meeting.

93-95 MAIN STREET

DISCUSSION OF  
ROOF BAR

93 MAIN STREET LLC

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Mr. Patterson – Mr. Getz and I met with Beau at the building and we did go up onto the roof and at this point there is not an application in yet. What we wanted to do is basically see the layout. There were a couple of minor things that we pointed out like tree branches in the way of the stairs going up to the roof, etc.

Mr. Getz – It is an interesting proposal, you have a very nice view of the downtown area but there are significant construction issues to address like access, etc. In terms of the zoning, the use would be allowed, they would still be under the allowed building height but to build the proposed stairway along the side of the building would require construction practically up to the

property line. The ZBA has already granted a variance on construction there in the past but the new walkway and stairs would be encroaching into that small sideyard and it gets very close to the property-line so a variance would be required. We also discussed other possible problems would be lighting and noise. The immediate adjacent buildings are all commercial but there are some residences on Wheeler Ave. which is not too far away. As far as parking, the project that was previously approved which includes the Thai restaurant, Dunkin Donuts had parking calculations that were reviewed and there are also public parking areas available on the street.

Mr. Getz – Why are considering this?

Mr. Kennedy – It is because of the times we are in now and that the restaurants in particular have struggled with this and outdoor seating has become a big idea in the world of restaurants and it seems like someone like us, a smaller building with a flat roof to go up rather than go outside of the footprint of the building and I think it is a positive thing both for the Village, the restaurant and for people visiting the Village. You can fit more people outside instead of having just 50% occupancy. We were just thinking outside the box even though this is not the first time this has been done, it is being done everywhere.

Mr. Patterson – There were some observations I made and staying away from the edge of the building is of course one and safety also. There is some large A/C equipment out there that would restrict the size of the deck so it is not going to be a major increase in the footprint. Do have any idea how many seats this will hold?

Mr. Kennedy – Probably 20 +/-, it will be about 750 sq.ft. as the preliminary drawing shows. The deck could grow or shrink, and the seating could change, it all depends on the cost. Once we know a little more we can come back with an application.

Mr. Patterson – You will investigate the cost before you put the application in?

Mr. Kennedy – Yes we need to make sure it makes real sense to do.

Mr. Gallo – Is it a rooftop bar or just outside seating?

Mr. Kennedy – Most likely there will be a bar setup there so patrons can be served right there rather than going up & down. It would be winterized because it will not be in use from Nov – March unless we have great weather.

Mr. Olsen – Do you prepare food in this restaurant?

Mr. Kennedy – Yes, they do prepare food.

Ms. Boland – Are there 2 exits required?

Mr. Kennedy – We currently have an exterior access ladder to the roof which we installed for the purpose of fixing mechanicals and that could potentially be an additional exit.

Mr. Patterson – We will wait to see if you want to move forward or not.

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

Respectfully submitted;

Maureen J. Evans,  
Planning Board secretary