

CHAIRMAN: JAMES PATTERSON

MEMBERS: WILLIAM OLSEN, JESSE GALLO, KERRY BOLAND & THOMAS McKNIGHT

Alternate: Bryan Barber

VILLAGE OF WARWICK  
PLANNING BOARD MEETING  
MARCH 9, 2021

The monthly meeting of the Village of Warwick Planning Board was held on Tuesday, February 9, 2021. Present were Jim Patterson, Jesse Gallo, Bill Olsen, Kerry Boland, Bryan Barber, Village Engineer, Dave Getz and Planning Board attorney, Robert Dickover. Others present were: John Cappello, Keith Woodruff, Andrew Fetherstone, David Everett, R J Smith, John Christison, Patrick Gallagher, Gene Bowen, David Gordon, Lenore Franzese, Priscilla Cashey, Melanie Wesloske, Nancy Bowden, Bradley Cleverly, Debbie Pappar and others.

The meeting was held in the Senior Center connected to Town Hall.

The Board recited the Pledge of Allegiance.

Mr. Patterson acknowledged correspondence via e-mails regarding Warwick Commons and 16 Elm Street.

A MOTION was made by Bill Olsen, seconded by Bryan Barber, and carried to accept the minutes of the February 9, 2021 Planning Board meeting as corrected. (4 Ayes) {1 Abstention – Jesse Gallo}

VILLAGE VIEW

EXT. OF 28 LOT SUBDIVISION  
APPROVAL

VILLAGE VIEW

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The Board reviewed a letter submitted by Kirk Rother requesting a 90-day extension.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo and carried to grant an extension until June 9, 2021 for Village View 28 lot subdivision approval. (5 Ayes)

The Board reviewed a letter submitted by Larry Wolinsky of Jacobowitz & Gubitz requesting a 90 day extension for site plan approval.

A MOTION was made by Bill Olsen, seconded by Kerry Boland and carried to grant an extension until June 9, 2021 for Warwick Commons site plan approval. (5 Ayes)

Mr. Getz – At this time I am an employee of Engineering Properties and I believe it would be a conflict of interest for me to review this project so I will recuse myself from this application.

Mr. Patterson – At this time, the Village Board is looking into bringing in a new engineer if need be for this application.

Mr. Dickover – What you have in front of you is an application for an extension at the first instance of a previous approval granted by this Board and if that is not worth forthcoming an application for re-approval. We have a code provision that provides that in the event construction has been commenced and not completed within 2 years of the approval date the site plan expires and that is the reason for this application for re-approval. Representation for the applicant is here tonight and they may want to address their application for an extension in the first instance and certainly the Board would want to hear what their position is with respect to that. I will not comment on that part of the application but with respect to the application of re-approval your code says that on such an application the Board should follow the same procedure as that for site plan application. Therefore, if we are going to proceed in that vain, I suggest that this evening re-affirm it's status as Lead Agency as you were on the previous application, re-affirm the typing of the action as Unlisted and our code provision for applications for extensions where work has not been commenced sets forth the core criteria for the Board to examine. Upon such an application and it seems to me where work has been commenced as it has in this case that the criteria probably would be even less than before items for examination on an application for extension when work has not been commenced. The law also says that the Board should examine any change in circumstances with respect to the project and so it is my suggestion that the if the Board proceeds with the application for re-approval that we further an inquiry to the Building Dept. for their comment on 5 items: 1) did any changes in relevant circumstances concerning the project 2) to their knowledge have there been any statutory or regulatory changes that effect the land or proposed land development contemplated by the site plan 3) have there been any changes in the neighborhood of the planned development that effect the land of the proposed land development contemplated by the site plan 4) have there been any environmental changes that effect the land or proposed land development contemplated by the site plan 5) a statement as to whether or not the applicant has diligently pursued satisfaction of the conditions attendant to the conditionally approved site plan. With respect to that they did satisfy the conditions on the prior site plan approval and so I think that particular inquiry is easily addressed by the Board.

Mr. Olsen – What are the requirements for an extension? An extension would seem simple.

Mr. Dickover – This applicant made an application for an extension some time ago and my position at the time was that the 2 yrs, had already run. At that time the applicant also requested of the Building Inspector a determination on that question, did their approval expire. The Building Inspector found that it had not, and the applicant withdrew their request for the extension based on the Building Inspectors determination. That determination by the Building Inspector has since been appealed to the Zoning Board of Appeals and that matter is still pending before that Board but it is my opinion that because you have this application in front of you, you are duty bound to entertain it and we should entertain it. If the Zoning Board determines that the Building Inspector’s decision was correct the applicant at that point may or may not withdraw the application for re-approval, not needing it. If they receive an adverse determination from the Zoning Board of Appeals, they will have already been in the process of seeking the approval in front of your Board.

A MOTION was made by Bryan Barber, seconded by Bill Olsen and carried to re-affirm status as Lead Agency and to affirm the type as an Unlisted Project under the SEQR process and to refer 5 questions to the Building Dept. for their report back to the Board. (5 Ayes)

Ms. Boland – I did not get a copy of the memo.

Mr. Patterson – Did you get my letter?

Mr. Boland – I did.

Mr. Patterson – Asking you to recuse yourself from this application based on your statements from the public hearing a few years ago. I don’t know if that may have been the reason why.

Secretary – I don’t recall if the comments came before or after the packets went out.

Mr. Olsen – It was e-mailed.

Mr. Cappello – Would the Board like us to respond to any questions or provide an overview.

Mr. Patterson – Yes.

Mr. Cappello – I am here on behalf of John Christison and 16 Elm St. LLC along with Keith Woodruff, a project engineer. This project was before the Board for 7 or 8 months in 2018. In February of 2018, the Board voted to grant site plan approval to this site plan based on a complete SEQR review with a complete Part 3 and several studies subject to 17 conditions. Those conditions were met, and the map was signed by the Planning Board Chair sometime in May 2018. During that time there was a challenge of the site plan approval by an Article 78 in Orange County Supreme Court. That action was dismissed. Upon dismissal Mr. Christison received a Building Permit in August of 2018 because he did satisfy all of the conditions and pursuant to that Building Permit which constitutes a determination by the Building Inspector that the Building Permit and site plan were in conformance with the Building Code of the Village of Warwick, he began construction and relies upon all of this. The Article 78 was then in the Appellate Court because of the appeal the financing of the project didn’t go through because they were waiting to hear the decision of the Court. Appeals take quite awhile and complicating that was Covid and stopping the Courts from functioning for a long time so the decision was awhile coming and there were oral arguments during that time, there was a motion practices and with the appeal, I continued to go forward. The applicant in January of 2020 made a request of the Building Dept. and Planning Dept. of when the site plan could expire and was given a letter

stating that May 24, 2020 the site plan would expire, prior to that in April of 2020 the applicant made a request for an extension of that approval, as Mr. Dickover stated. At that point for some reason, a difference in your Code regarding the language was not clear as to whether an extension could be granted if you actually go ahead and satisfy the conditions unlike the applications you just extended and have been going on for years without doing anything and if you actually do something and act on your rights the Village laws are not as clear as to whether you can be extended. I believe that reason is because of the law on vesting of rights that when you do start construction you vest your rights, but that is before the ZBA right now. The ZBA will hear it, they may determine that it be extended, they may determine that it can't but as of today the Building Inspector did issue a determination after consultation with the Village attorney stating that the timeframes were tolled pending the determination of the litigation. That litigation was determined in the applicant's favor in December of 2020 and at that point the neighbors appealed that determination of the Building Inspector and that is what is before the ZBA. The ZBA had adjourned it until the determination was made. We believe the applicant's reliance upon actions of the Village Building Inspector, the Village Planning Board, being successful in court and has diligently pursued it's rights. However, we understand there is a ambiguity in the Code we believe but that is before the ZBA. So, will I stand on ceremony because we believe the circumstances haven't changed, I have provided case law in the application that states the standard of review, courts have said the standard of review whether it is a re-application or an extension is essentially the same, that is hasn't been any change in circumstances. What we are asking the Board, I don't believe the Board has done this to treat this as a re-application to move forward with it and we would hope that you would confirm your SEQR determination, we provided you today some evidence demonstrating there have been some allegations about some tree removal, we have submitted photograph evidence that we believe demonstrates that the trees that have been removed have been in the areas that have been shown on the plan as areas for removal. We will forward a copy of the to the Building Dept. The Building Dept. had looked into the issue, they had discussed it with the Village Board and at that time instead of standing on ceremony and arguing, to fill the gaps the applicant agreed to do additional plantings in addition to what was approved by the Board, so the only potential, and we don't believe it was a changed circumstance, we believe it is an additional benefit is the addition of the additional plantings then those approved by the Board. That evidence has been placed before you and I am sure you will hear as you move forward as you go to a public hearing you may hear different prospectus; we will supplement the record with what we believe and as you go through this you will find that there has been no change, circumstances, that the applicant is moving forward diligently and that he would be entitled to a re-approval.

Mr. Patterson – As we said I think we are going to send a letter to the Building Dept. and ask if there has been any changes and I believe that re-affirming our status as Lead Agency and the Unlisted Action, I believe we can do that tonight.

Mr. Dickover – Yes, I believe you will want to have the report from the Building Dept. before you go through the Long Form EAF that has been provided with the application and with that information from the Building Dept. you will then be able to review the Negative Declaration that was previously issued and see if it is correct and proper to re-affirm it or not. If not, then it would need to be Supplemented but that is for another night.

Mr. Olsen – I see not difference, is there a difference than the maps we had before?



are provided on each of the 3 sections. The internal roadway layout has been revised to reduce the number of internal roadways servicing the development and now provides either a thru road, a cul-de-sac or the loop road on this section, there were a lot of dead-ends on the site. The current plan removes the proposed dead-ends parking lots and stand alone garage enclosures. The original road came out to a six-way intersection which we removed and replaced it with a safer 4-way intersection. The buildings on the previously approved plan were much closer to the existing units in the HOA on the property line and the same thing on the east side which were much closer to the Ridgefield subdivision. All of the proposed lots are accessible by Sheffield Rd. or by Magnolia Lane which we relocated. The road through Sheffield Dr. and some of the utilities there were built, the water main in the road is active, there is a sewer line that is sewerage a portion of this subdivision and taking it around and that's live, there was a culvert that was put underneath the road and some various drainage structures. The road itself is in terrible shape, there are trees growing through it and it needs to be rebuilt. We are proposing on-site stormwater management throughout the development. We did site specific soil testing all over the development. The USDA soil survey doesn't show favorable soils but when we went out and did digs in the locations, we wanted to put the stormwater we found very sandy soils and very good rates but all of that is in the stormwater report and has been reviewed and commented on by the Village Engineer. The site is proposed to be served by water and sewer and we are now proposing to take the sewer from the western side of the site and connect going down Brady to a road called Kenilworth. On the original plans the sewer manhole was shown as being at this location but that sewer does not exist. We coordinated with the Village Engineer and we found a place to connect to and it is about as far as if we had to go through the HOA lands and it is all gravity so we do not need a pump station. The difference between the current plan versus the previously approved plan are: 1) reduction of 26 units as opposed to 2012 plan 2) the number of bedrooms is 180 which remains the same 3) reducing number of residential buildings from 15 to 14 4) the setbacks are increased over the 2012 plan 5) we completely revised the stormwater facilities. All of the stormwater quality and quantity meeting the State standard which are more stringent than they were in 2012 and the Village's 10% reduction over the peak flows are all met on the site and that report has been reviewed by the Village Engineer.

Mr. Getz – Could you identify that design point for your analysis?

Mr. Fetherstone – The stream comes through the site from South to North, everything washes into the stream, that is where it discharges. We had extensive conversations with the Planning Board and the Village Board about the gate as to whether it be there, remain open or closed, we are showing the gate, there is a detail on the plans to keep it closed during construction and once the road is constructed and dedicated to the Village, it is the Village's prerogative whether they want the gate open or closed but it would remain accessible for people to walk or bike around, walk your dog, go to from one neighborhood to the other and it would be a combo lock similar to other facilities that the EMS uses. We are avoiding wetland and stream impacts. One comment from your Engineer was "can you get back a little further, give a little bit more of a buffer in the area or a separation distance between the grading and wetland area" I think we can do that. That is one of the comments that we will be addressing on the final revision.

Mr. Getz read his comments. (Please see attached)

Mr. Dickover – I was asked to prepare a memo on the question of whether or not the project required affordable housing. I did prepare that memorandum and it has been circulated amongst the Board members and my conclusion is that the project is not subject to the affordable housing provisions of the Village Code.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo and carried to open the public hearing. (5 Ayes)

Ms. Nancy Bowden – I see the people in Ridgefield petitioned for that gate so they would not have through traffic and just for people to go live there. When Sheffield was a working road when it was first put in, it was like a thruway and it will continue to be a thruway if you don't limit the traffic there because people from the development next door want a short cut. No one wants to go down to the bottom of Brady Rd. and make the hard turn onto Ball Rd., it is a treacherous turn. Adding 100 or more cars to that turn plus people walking on Ball Rd. with their dogs during rush hr. I commute on that road and to have a 100 more cars there I can't imagine besides then there is Maskers Orchard, Applefest and the rest of it. But other concern as a homeowner is I am going to be paying to repair our roads when 100 cars from this development is going to be driving through Warwick Meadows just the way the condo people drive down through our main area they are going to be driving through. They might not want to go down to Brady Rd., they might want to drive all the way through Warwick Meadows which we are responsible to pave. Who is going to be paying us for our roads? Who is going to be looking after the sidewalk that runs along Sheffield in the snow? It is decided over to the Village, is the Village going to come out and shovel those sidewalks? There is a lot to think about. Living here for so long and knowing the issues with the drainage, seeing what happens with our sewers, our pipes, the drain, the water pressure, it is very concerning to us that live here that we will have this development. We know we can't stop the development but we want to really make sure everyone is safe and it is not safe and we don't want to be paying to pave our roads. We can hardly pay to pave our roads as it is let alone paying for 100 extra cars driving through Warwick Meadows. I think those people in Ridgefield that signed that petition about the gate really thought this Board and the builder expected that the gate would be closed and that issue was over, not that the issue is going to be on going and opened and closed.

Mr. Patterson – I do know that what was discussed at our Board meeting was the fact that while construction was going on the gate will be closed. It is not this Board's decision what happens after the road gets dedicated, it is the Village Board at that point. We actually have not say in that.

Ms. Bowden – That is a shame because I think that what we hear as proposals are great ideas but if it does not come fruition in the end I think they trusted that, that was going to happen and I don't hear any solution of how they are going to keep people from driving through our development and who is going to help us pay for our roads which comes out of our HOA fees unless their HOA is going to be set up to give us money for our roads.

Mr. Patterson – I am sure the Village will take that into account when the time comes.

Ms. Lenore Franzese-HOA – We are an interested party because with this phase of the development of Warwick Commons we were told that it has to go through our dam and that the culvert has to be able to accommodate this new development. We were contacted by Mr.

Fetherstone as the engineer representing the developers and we met with Mr. Katz and Mr. Unger on Sept. 14, and we were presented with 2 options; 1) to decommission the dam 2) accommodate their development to re-structure the dam, change the culvert, which would happen to raise our roadway 4ft. and to raise the road 4ft would be quite considerable and would change the whole aesthetics, a safety concern, etc. We realized we had to consider all of this, it is not the first time this issue came up, we have been presented many times over the years with another development building. The original developer was supposed to do that third phase and now it is called phase 5 and we don't know why. We are at this point where we are told that we either have an option to decommission it or to take the offer to renovate to accommodate this new development. It was a lot to consider, we are not engineers, we homeowners, Board members, volunteers, and it was more complexed than we originally thought and with that our community told us we needed to hire our own engineer. We hired MJS and they came up with a third option. I know Mr. Fetherstone said they can go around the dam, that they don't have to go through the dam, and we are not sure where that leaves us because we have been told that it is all linked together. Is it linked together or is it not linked together? We have put in writing several times along with e-mails to the Planning Board in January 23, 27, Feb. 9 and we have come to the Planning Board meetings and we have not heard a response, so we just ask that you consider what we did put in our paperwork to you before you take action to decide what its going to be. It will impact us as Nancy said we have already had water problems. We have never had a problem with our dam, with Sandy and Irene it always held up, but we have had other water issues with drainage, pipes breaking and those are our responsibility. There is also a concern from the silt that might come down from that development right into our dam. We have a big retention pond close to Brady Rd. which is never the Village's responsibility when we have a problem with it as it is never the responsibility of the Village when we have problems with our water lines, in this past year alone we have incurred \$7,500.00 when we have water line breaks and homeowner have incurred when it was on their property thousands of dollars. This is something that we don't take lightly because not only is it affecting us but the underground area and it could further affect the community down on South St. where with every big storm we have had they have had huge floods. We have been told that we have held this situation hostage which we certainly have not. We have done our due diligence and we just want to be considered in the whole process and you making any decisions going forward. I think Ridgefield has some water running through our dam too. We want to be neighborly to everyone and we don't want to cause any obstruction to the development going up we are just trying to protect our interest and make sure that we can maintain the integrity of our property, our roads, our foundation and infrastructure and that it is not impacted adversely by this project.

Ms. Bowden – We have never had problems with the pond but we have had tremendous erosion to that creek that leads down the pond. My house sits next to the creek and you use to be able to walk around the whole unit and one unit in the back actually has sliding doors so that they can walk out. They can't do that anymore it is all eroded. My concern is now that all of these things are being added, and I have read that you are basing this off of 2012 or the original 1986 because there has been no considerable change. The fear of my unit falling into the abyss is a considerable change. That erosion is real. We have to put up a retaining wall to keep the erosion from happening and it is still happening. There has been tremendous change to the landscape but the pond has never over-flowed and the water retention where all the parking lots drain to and

where Brady Rd. drains to, that the Village would never help with, enough though water comes off of Brady Rd. is filled. Water can no longer drain there. So you have a retention pond that is no longer a retention pond, it is a grass field where kids play football. It is not even mushy anymore and I don't know if these things were looked out.

Mr. Patterson – All of the responses to your questions will be answered in written form.

Mr. Joesph Danz – How far is this property going to come up to my property and my neighbor's property on Ridgefield Rd.? Will there be barriers there? Does it go over the stream? I can tell you that the road is a mess, they have been back there and they have cut down trees time and time again. I have had people come onto my property, in my backyard doing surveys, they are trespassing and it has happened twice. The little creek that runs through there, Native Brook Trout are in there and they are environmentally sensitive, and they have been reproducing for years. Have they done the impact on the creek coming down that way and the fish that are in it? We have a bear that lives out there and deer that come through there on a regular route and that is going to impact all these animals living in that area. We live on Ridgefield Rd., how many people are going to be waltzing through out backyard? What type of protection are we going to get? How will you make sure that there isn't soil erosion there? If there are ponds there, there could be mosquitos. There are not many places for the animals to go, they come to my pool for water. There are a lot of considerations here, but I can tell you there has not been a lot of good faith with this project for the longest time. The whole area back there is pristine and then you have that mess of a road. The road and area have been neglected for years; I don't want that to happen again.

Ms. Franzese – After we hired Mr. Cleverly from MJS Eng., they came up with a third proposal for this project and we just want to make sure that, that can be reviewed also. We were presented with 2 options and none of which were very appealing but Mr. Cleverly did a Comprehensive Report for us and that was forwarded to you in February in an e-mail. There was some mention of a tree barrier to go between our development and the new development and with it so close we would ask for a double tree barrier instead of a single tree barrier.

Mr. Patterson read a letter from Lorraine Portelli regarding water pressure and the gate.

Mr. Olsen read a letter from Lorraine Portelli regarding the intersection of Sheffield and Brady Rd. saying there are some trees there causing reduction in site distance.

Mr. Patterson read a letter Chelsea Leber requesting a new environmental review.

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

A MOTION was made by Jesse Gallo, seconded by Kerry Boland and carried to adjourn the meeting. (5 Ayes)

Respectfully submitted:

Maureen J. Evans,  
Planning Board secretary