

VILLAGE OF WARWICK
ZONING BOARD OF APPEALS
MARCH 16, 2021

The monthly meeting of the Village of Warwick Zoning Board of Appeals was held on Tuesday, February 16, 2020. Present were: John Graney, John Prego, Jonathan Burley, Scot Brown, Margaret Politoski, Dylan Gieber and Zoning Board attorney, Robert Fink. Other's present were: John Christison, John Cappello and David Gordon

The meeting was held in Town Hall.

A MOTION was made by John Prego, seconded by Jonathan Burley and carried to accept the minutes of the February 16, 2021 meeting. (5 Ayes)

16 ELM STREET

BUILDING INSPECTOR
INTERPRETATION

16 ELM ST. LLC

Mr. Fink – I have bullet points and there is a lot that you might get into but I am not sure that you have to. The primary points are does Gallagher have standing and did the litigation stay the running of the site plan to completion of construction. The Building Inspector's position was, first of all he admitted that there was no provision in the Code staying it and there is no provision in the State law staying it but he found that "the prevailing rule is that the time limit for a property owner to act upon a land use approval is tolled by the filing of a petition for judicial review of the permit" citing 3 Rathkopf's and then he also cited a case from 1984, 230 Tenants Corp. 1) based upon my research there was no case in New York State that adopted Rathkopf so I question whether it is a prevailing law in New York and 2) Mr. Gordon cited a case of Alleghany Wind which is a 2014 case in effect rejecting the fact that litigation stays the running of the tolling of the statute of limitations. That is essentially it. This is why we are here. Does any one have any opinion or a contrary opinion as to Mr. Gallagher's standing to bring this appeal? Mr. Graney – No.

Mr. Fink – I believe the case law is pretty clear. Then we get to the main question and that is if you concur with the Building Inspector, that would end it. If you do not concur with the Building

Unapproved minutes

Inspector that would end it to unless you chose to go forward and consider other items but keeping in mind the Building Inspector will find only on the fact that litigation tolled the statute of limitations. There are other things you might want to consider but certainly that is going beyond what the Building Inspector said. Does anyone have any opinions or thoughts, questions as to whether or not the Building Inspector was correct? That is that the fact that the Article 78 was filed even though there is nothing in the State law or Town law that says it stays litigation, stays tolling of the 2 year period of the site plan and the Building Inspector was correct. Any thoughts.

Mr. Graney – No.

Ms. Politoski -No.

Mr. Brown – Yes, in my opinion I believe that the Building Inspector does not have the legal case to be able to toll that and extend the validity of the site plan. I feel bad about that, I wish Mr. Christison all good luck and I hope to go into the restaurant when it is done but I think that Mr. Dickover's letter says that the Village Code requires another application to the Planning Board to extend or revalidate the site plan.

There were no other comments from the Board.

A MOTION was made by Jonathan Burley, seconded by John Graney and carried that the Board agrees that the litigation tolled the 2 years in which the application had to complete construction.

John Graney – Yes

Jonathan Burley – Yes

Margaret Politoski – Yes

John Prego – No

T. Scott Brown – No

A MOTION was made by John Graney, seconded by John Prego and carried to adjourn the meeting. (5 Ayes)

Respectfully submitted,

Maureen J. Evans,

ZBA secretary