

Village of Walden
Zoning Board of Appeals Meeting
August 28, 2024

Chairwoman:	Brenda Adams	Present
Members:	Mary Ellen Matise	Present
	William Sestrom	Present
	Scott Barilli	Present
	Lisa Mazzella	Present
Alternate Members:	Christine Scieurca	Absent
Building Inspector:	Robert Wallner	Present
Village Attorney:	Dave Donovan	Present
Secretary:	Anisetta Valdez	Present

Chairperson Adams - Called the Zoning Board meeting to order at 6:30pm with the Pledge of Allegiance.

1. APPROVAL OF MINUTES:

July 24, 2024

Motion for the approval of the July 24th minutes made by Member Sestrom. Seconded by Member Barilli. All ayes. Motion carried.

2. BOARD BUSINESS

Chairperson Adams: We're going to do something different tonight. We're going to identify our members. bwe have Lisa Mazzella, Scott Barilli, Bill Sestrom and Mary Ellen Matise. I'm Brenda Adams, I'm the chair and we have an alternate, Christine Scieurca who is not here right a the moment. Thank you. Now our attorney would like to speak to us about the alternate.

Attorney Donovan: So briefly about the alternate member, I spoke to Brenda after the last meeting about if the alternate actually sits on the dais whether or not that person could designate and actually what the law requires, the chairperson of the zoning board of appeals may designate an alternate substitute for a member when such member is unable to participate in an application such designation shall be entered into the minutes of the initial board meeting at which the substitution is made. So just as a course of action and just to identify for applicants or members of the public who are here the fact that an alternate is going to be participating should be identified at the beginning of the meeting and should only participate in those applications in which that alternate has been designated.

Member Matise: So that means that if some members are recusing themselves?

Attorney Donovan: So the state law says that this should hold for conflicts of interest. The local ordinance allows us to expand that so it takes that limitation away. Which would allow the alternate to participate in the absence of that [member] but that person would have to be designated at the beginning of the meeting so everyone is aware that an alternate has been designated.

Member Matise: So if the alternate is designated because she's substituting for someone then she can vote. But if they are just sitting in, are they part of the discussion?

Attorney Donovan: That's right. So they would only be a part of the discussion if they had been designated as an alternate participant. Unstated in the law is what happens; for example, [Member Matise], you're not here, an application is heard, and what happens at the next meeting. The law doesn't state what happens, it's probably better for consistency purposes that the alternate remain, but if they are not available then that member shouldn't sit in.

Member Matise: It also brings up the reason for having the alternate present at every meeting so they can [be present from the beginning of an application].

Attorney Donovan: Well, it's above my pay grade to say what people should do.

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Member Matise: To me that would seem to be the reason for having alternate.

Chairperson Adams: Attorney Donovan has made a suggestion that we create a policy so that we know, in the future exactly what the alternate does and where they sit. I spoke to Christine yesterday and she is fine with sitting in the audience because if she sits up here she cannot participate and ask questions. Where if she sits in the audience as a resident of the village who is not going to vote in anything that we do she has the opportunity to ask a question. So is everybody in agreement...?

Attorney Donovan: It was my recommendation to develop a written policy so it's not ad hoc if we go through these things and if that's ok with you, I can put a draft of something together that you can all review. The planning board seems to have an issue where they really need alternates.

Chairperson Adams: Would you like a motion for us to ask you to write up a policy?

Attorney Donovan: I think I have a consensus, when you're happy with the policy I'll ask for a motion to adopt. Right now [inaudible].

Chairperson Adams: Great. Thank you, please do that.

A. PUBLIC HEARINGS:

A.1 250 & 254 Lustig Court, 6:30 PM

Chairperson Adams: First item on our list is **250 & 254 Lustig Court**. First I'm going to read the notice. Please take notice that a public hearing will be held on Wednesday, August 28, 2014, at 6:30 PM, or as soon there after as can be heard, at the Village Offices, One Municipal Square, Walden New York to consider the appeal of Brandon & Rebecca Kassapian for an area variance for properties located at 250 & 254 Lustig Court, and identified on the Tax Map as Section 315, Block 4, lot(s) 2 & 3.2, located in a R-3 (single family) Zoning District from certain provisions of the Zoning Law of the Village of Walden so as to construct a 6'-0" wooden fence within the side yards of the above property.

1. Vary Section 305-21, Permitted Fences and Walls so as to construct a 6'-0" wooden fence within the side yard area, where the maximum allowable height is 4'-0".

All persons interested shall be given an opportunity to be heard on the issues raised on the appeal.

All the notices have been mailed and the GML was mailed on July the 9th and we have exceeded the thirty days, we have no response from the county. Would you like to make your presentation? Good. Please state your name.

Brandon Kassapian: I have three children under the age of five, one is diagnosed with autism and is classified as an eloper. A lot of people come flying down the road and don't pay attention to what is going on and recently was almost hurt. Another child is also exhibiting the same traits and there needs to be some extra safeguards.

Chairperson Adams: Is the fence up?

Brandon Kassapian: The corners are up, it was ok'd by the building department. We started putting things into motion and I just want to keep my child safe.

Chairperson Adams: So your only reason is [for safety]?

Brandon Kassapian: The child's worker has witnessed the issue with the traffic. The front door is locked and so is the backdoor, but he can get out of it.

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Chairperson Adams: Why do you need to do the lion's share of the yard? Unfortunately, because the fence is up, we can't see the layout of the house and the position of the doors to verify what you're saying.

Brandon Kassapian: I was told not to put up the panels. He can get out of the sidedoor which leads to the street. I still want to give him a quality of life so that he can go outside without possibly injuring himself.

Chairperson Adams: Did you discuss with the building department what kinds of fence you can use?

Brandon Kassapian: I was originally approved for a 4' fence but I decided to put up a 6' so that there is greater security. I have installed more substantial locks on the gate to safeguard any further

Member Mazzella: I don't have any questions. I understand all too well.

Member Barilli: A 4' fence may be ok for a moment, but a 6' fence is really going to be the best for a longer period of time. I don't have any problems with this.

Member Sestrom: With regards to putting the fence up early, I suspect, I would ask counsel about this, I think the ADA would support this situation. I would ask counsel to comment on that whenever he things appropriate. He put the fence up early but he did that to keep his child safe, I think he would get support from ADA for doing that.

Attorney Donovan: I don't know that ADA would specifically address that issue.

Member Matise: I think you're thinking CPS (Child Protective Services). ADA is just handicap compliance.

Member Sestrom: Perhaps. Normally when applicants do things early and they've been told not to or asked not to, it bothers me, but in this case it does not.

Attorney Donovan: Not to step out of my lane, I'm just the attorney, but I do have some sensitivity to this. My wife has two nephews who are both autistic they are now twenty-nine years old, still they are flight risk, and at that age they were an extreme risk.

Member Mazzella: My brother who is going to be sixty [years old] and I can say that I understand. From the time my brother was little, he was fast, and it was the first time I saw my father run and my brother was very fast.

Brandon Kassapian: [We didn't put the fence up sooner] because we didn't have as many children and this is a newer problem.

Member Matise: We don't know why the Building Inspector told you not to put up the fence but what you've done here, is you've built onto the lot next to you. And number 2, what's with this open area here? Are you familiar with the programs offered by the village?

Brandon Kassapian: I've been putting together this money for a long time. I'm sure that they have a lot of programs that I'm not aware of I've just been trying to get this up.

Member Matise: [Looking at the map] with the behavior that you're talking about, the stream there is a bigger concern don't you think?

Brandon Kassapian: Yes, but it's not a bigger concern because it dries up very quickly. The cars are a much bigger concern.

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Member Barilli: You can see the sign but it's about half way up and the issue is that the GPS isn't incorrect so people get lost. [Story about a man who had a heart attack and the ambulance was driving around looking for the emergency].

Member Matise spoke about moving the dead-end sign, children at play signs

Member Mazzella: When was the child diagnosed?

Brandon Kassapian: We had early intervention around two years old. My other child, Lucas, is exhibiting some similar signs so we are having him checked.

Member Mazzella: My reason for asking is at four years old there can be a lot of difference between two and four.

Brandon Kassapian: His interest is the logos on cars and the signage. He feels compelled to inspect them and count the letters. I can't chase him as well due to injuries.

Motion to open the public hearing made by Member Sestrom. Seconded by Member Barilli. All ayes.
Motion carried.

Chairperson Adams: Before people from the public come, I'd like to add into minutes that we have a letter on file from Anna Demirer regarding the child, his diagnosis and activities. That letter is in file. Anyone from the public like to speak?

Pauline Ferguson: 16 Center Street, you had an engineer come out? [Showed a drawing of a fence that has has curve on the top to help restrict climbing] I would talk to an engineer about it.

Chairperson Adams: Actually, Pauline, you need to address us please. You're not supposed to talk to him.

Motion to close the public hearing made by Member Barilli. Seconded by Member Sestrom. All ayes.
Motion carried.

A.2 2 Ayr Court, 6:30 PM

Chairperson Adams: The GML came back that it was local. I will read the notice.

PLEASE TAKE NOTICE that a public hearing will be held on Wednesday, August 28, 2024, at 6:30 PM, or as soon there after as can be heard, at the Village Offices, One Municipal Square, Walden New York to consider the appeal of Mr. Odrais Cilius for area variance(s) for property located at 2 Ayr Court , and identified on the Tax Map as Section 308, Block 9, Lot 10, located in a R-3 (single family) Zoning District from certain provisions of the Zoning Law of the Village of Walden so as to construct approx. 114'-0" of 6'-0" white vinyl fencing in the side yard area, and to construct a 18'-0" above ground pool in the side yard area.

1. Vary Section 305-21, Permitted Fences and Walls, so as to construct approx. 114'-0" of 6'-0" white vinyl fencing in the side yard area where the maximum fencing height
2. is 4'-0".
3. Vary Section 305-23, Private Swimming Pools, so as to construct an 18'-0" above ground pool in the side yard area, where said pools are not allowed.

All persons interested shall be given an opportunity to be heard on the issues raised on the appeal.

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Odrais Cilius: I didn't know in June when I requested the permit that the position was an issue. When the inspector came and looked, then we became aware of the issue. We are just looking to make the backyard more enjoyable.

Chairperson Adams: You built a fence without permission?

Odrais Cilius: The 6' fence was already built when I became aware of the issue. The pool that we chose, we would lose deck space so we chose a different area of the yard.

Chairperson Adams: It's a preference, not a necessity?

Odrais Cilius: That's correct.

Chairperson Adams: You have two variances that you're asking for because the pool is in the side yard, which is not allowed. The other is a 6' fence. The permit was denied because the fence –

Odrais Cilius: [Was unclear about the number of variances]

Chairperson Adams: There is enough room in the yard to put the pool in a place where you don't need a variance. The water will be bussed in, but in the event that the pool needs to be drained into the sewers, are you planning on using those systems?

Odrais Cilius: [Wasn't sure.]

Member Barilli explained the mechanics.

Member Matise: Decking?

[There is no sideyard because it's a corner lot, so there are two front yards.]

Rob Wallner: Comment about pool water in a storm drain, it's not legal to drain into a storm drain.

Chairperson Adams: This question is for the inspectors, this dotted line, does that mean there's a right of way? The dotted line is there...

Attorney Donovan: With a temporary cul-de-sac it usually indicates an intention to go through.

Member Barilli: the pool isn't set up? You have space on the other side?

Motion to open the public hearing made by Member Sestrom. Seconded by Member Barilli. All ayes.
Motion carried.

Chairperson Adams: Anyone in the public like to make a comment?

Motion to close the public hearing made by Member Barilli. Seconded by Member Sestrom. All ayes.
Motion carried.

A.3 126 North Montgomery Street, 6:30 PM

Postponed by the applicant.

A.4 20-22 Center Street, 6:30 PM

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Motion to reconvene the public hearing for **20-22 Center Street** made by Member Matise. Seconded by Member Sestrom. All ayes. Motion carried.

Patrick Brady: Engineer for **20-22 Center Street** thank you everyone for accommodating my schedule.

Chairperson Adams: With regards to this application, Mr. Donovan and I have been back and forth with some emails and with the building department. And at the July ZBA meeting we requested [that] building inspector Stickles review his determination and was sent to us for consideration published in the newspapers and sent to the neighbors the application request a variance to allow a lot width of 45' whereas 50' is required in the zoning code. The ZBA application is a result of a subdivision requested currently in front of the planning board. We were concerned about the effect of the variance if granted would have on the current configuration of the property Most specifically off street parking. You've all received Mr. Stickles' response where he confirmed the only code violation relevant to the proposed subdivision is the property width. Paraphrasing from the words of Attorney Donovan: as the building inspector has determined the application does not violate section 305-26 parking of the village code this section of the law is not before us for consideration. The zoning board only addresses the violations sent to us by the building inspector, we cannot create a violation therefore we must consider the effect of the requested variance as it relates to the five factor test. So do you want to add anything to what has been presented in the past?

Patrick Brady: the zoning is currently 50', requesting a 5' variance.

Chairperson Adams: [Member Matise] do you have any questions?

Member Matise: Not right now.

Member Sestrom: In the plans for the new house, is there parking?

Patrick Brady: Yes.

Member Barilli: No questions.

Member Mazzella: No questions.

Chairperson Adams: I guess I'm the only one with questions. I've been up North street which is where this proposed lot would end up being, several times at different times of the day. It's very congested. There is a lot of action there. Especially during the day. So it's a very congested, deadend street because the Village never went through with North street. The village has a reason for wanting 50', it's so tight for a fire truck to get up there or anything else. Now the subdivision that was done in the 90s that house is very close to a house on 1st street. And to me it creates a seriously dense area.

[An alarm began to sound and stopped]

Patrick Brady: Issues of traffic are the purview of the Planning Board, not the ZBA.

Chairperson Adams: Yes, I understand that.

Patrick Brady: This project won't be making anything more congested than it already is.

Chairperson Adams: I look at it and I could be wrong and Mr. Donovan will stop me immediately if I'm messing up here but I look at it like if we give the 5' it allows the planning board to move you on so that you can go on and consider it a full building lot and then after the fact if it's just impossible to be in there what a problem it might be.

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Patrick Brady: It's a controlled traffic area. There's a stop sign and there's room for cars to back up. Based on experience there is sufficient access.

Member Matisse: Sets precedence with Lafayette street going to George street, who also have narrow lots. This sets precedent.

Attorney Donovan: We have to keep the decision within the five factors.

Member Barilli: We cannot start to talk about parking issues, I have to back out of my street. I think we need to stick to the five factors.

[Concerns about precedence.]

Chairperson Adams: The factor I'm thinking of is the change in the difficulty—the environmental.

Member Barilli: That's just it. I'm trying to figure out my determination.

Attorney Donovan: Doesn't conform to the zoning, it came here, so there wasn't any extensive conversation.

Chairperson Adams: Wait wait we already, [Member Matisse] we already stopped the conversation about off-street parking. And [Member Barilli] is right when he says that what I'm talking about is not totally relevant to this, however, it's concerns that I have to make my decision so I feel like we need to discuss these thoughts.

Member Mazzella: Even with that, it's a case-by-case basis. They still have to come before us.

Member Sestrom: I would like to hear from the public.

Chairperson Adams: The public hearing is open.

Pauline Ferguson: 16 Center Street The last I heard is that in the wintertime the cars must be provided off-street parking. Did that change? Who has to discuss that? My tenant parks in the area behind.

Chairperson Adams: That would be between the owner and the renter. We cannot consider what is not in the five factors.

Member Matisse: The letter provided is for the new construction.

Pauline Ferguson: He has to be responsible. You're now saying that, it's like everyone on that street is going to park on the street. I disagree with taking that responsibility off of the owner and putting it on the tenants.

Chairperson Adams: That is between the owner and the renter.

Becky Pearson: I agree with [Member Matisse] for setting precedence, I feel that those laws are there for a reason.

Motion to close the public hearing made by Member Barilli. Seconded by Member Sestrom. All ayes.
Motion carried.

B. FORMAL APPLICATIONS:

B.1 250 & 254 Lustig Court, Area Variance.

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Motion to declare this application as a SEQRA as a type II made by Member Sestrom. Seconded by Member Barilli. All ayes. Motion carried.

Chairperson Adams: Now we are ready to go through the factors. I will read the factors and then everyone will put in their opinion. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance? All vote no.

Whether the benefit sought can be achieved by other means? All vote no except for Chairperson Adams who asserts a smaller area could have been created.

Whether the requested area variance is substantial? All vote no except for Chairperson Adams, because of the size of the property.

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district? All vote no.

Seeing as no neighbors have shown up to have a problem; and whether the alleged difficulty was self-created?

Attorney Donovan: You are charged with a notice of self-created hardship. Even though you may not have known.

Chairperson Adams: Lisa? How would you like to answer that question?

Member Mazzella: So [inaudible]

Member Barilli: Self-created but is necessary for the safety of the children.

Member Sestrom: The situation is self-created but that should not prevent him from getting his variance.

Member Matise: Same.

Chairperson Adams: And I would say that it's not self-created in the sense that your child needs extra help, but it is self-created in that you are building an excessive fence and that's a problem and I would recommend that however this ends that in future you check with the building department before you do anything because it could have been a very expensive problem if we were to deny this.ok. Are we ready to make a vote?

[All Members: Yes]

Chairperson Adams: The vote would be: do I move that counsel for the board be directed to prepare a written decision that is consistent with the findings of the board and either granting or denying the requested area variance.

Motion that counsel for the board be directed to prepare a written decision that is consistent with the findings of the board and grant the requested area variance made by Member Sestrom. Seconded by Member Barilli. All ayes.

Chairperson Adams: Variance granted. You got your fence.

Brandon Kassapian: Thank you.

B.2 2 Ayr Court, Area Variance.

Motion to make a SEQRA type II made by member Sestrom. Seconded by Member Barilli. All ayes. Motion Carried.

Undesireable change? No, to fence and pool x 4

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Other avenue for the pool? All no's.

Substantial? All no's.

Adverse affect: Odrais' house is the only one with a fence? All no

Self Created: that's always yes.

Dean Stickles: When you're suggesting to move the pool, the setbacks need to be considered. That's correct.

Attorney Donovan: State firecode 10' away from the home?

Chairperson Adams: That makes sense. That changes my opinion. I was under the impression that there's enough room in that yard for him to put a pool where he chooses.

Dean Stickles: [Check the setbacks so as the applicant doesn't have to come back.]

Rob Wallner: The size of the pool is a consideration which is why I suggested to the applicant, using an oval pool.

Odrais Cilais: We do have some space behind the fence to work with, but we would prefer to keep the pool where it is.

Motion to move the counsel of the board be directed to prepare a written decision which is consistent with the findings of the board and granting the requested area variances for two variances made by Member Sestrom. Seconded by Member Barilli.

B.3 126 North Montgomery Street, Area Variance.

POSTPONED

B.4 20-22 Center Street, Area Variance.

Chairperson Adams: GML was sent for local determination from the county? Yes, local determination. So I need a motion to make this a type II under SEQRA.

Motion to make this a type II action under SEQRA by Member Matise. Seconded by Member Sestrom. All Ayes. Motion carried.

Chairperson Matise: Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance?

[Member Mazzella feels like the street could suffer more congestion.]

Patrick Brady: May I respond?

Chairperson Adams: I'm sorry, the public hearing is closed.

Patrick Brady: I'm not the public.

Member Sestrom: He's the applicant.

Attorney Donovan: It's at the discretion of the board but [he is able to respond].

Chairperson Adams: Proceed.

Patrick Brady: Thank you. If there were 50' we wouldn't be here, but it's 45' so to address your concerns as to cars and width of the driveway we can fit and move out safely.

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Member Barilli: I don't think it'll be a problem.

Member Sestrom: I hear from the public that this is going to create a hardship. People who used to have parking will no longer have parking so I'm concerned that and I would say it will change the character of the neighborhood.

Patrick Brady: May I respond to that?

Member Sestrom: Yes, please do.

Member Matisse: [Disagreeing with Mr. Brady's responses] Yes, I do think this will create an undesirable change in an over congested area.

Patrick Brady: It's not insulting, unfortunately, you have to give me an opportunity to respond.

Chairperson Adams: I also have concerns about it being an undesirable change.

Whether the benefit sought can be achieved by other means? All vote no.

Whether the requested area variance is substantial? Three vote no, two vote yes.

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district? Member Matisse votes yes, because of the size of the street, Member Sestrom is undecided, Member Barilli votes no, Member Mazzella votes no, Chairperson Adams disagrees with Member Matisse about the plowing, however, is concerned about the impact on the other properties but no neighbors have come forward except Pauline.

Whether the alleged difficulty was self-created? All vote yes.

Chairperson Adams: Mr. Donovan should we accept written comments from the applicant?

Attorney Donovan: It's your choice, but if you're going to accept written comments from the applicant it's only fair to accept written comments from the public. It's up to you.

Patrick Brady: I would like the opportunity to respond.

Motion to hold over the decision until September and give a 10d period to make comments by Member Sestrom. Seconded by Member Barilli. All ayes. Motion carried.

C. DISCUSSION ITEMS:

Chairperson Adams: I have a request: **2 Ayr Court** is next on our list but **20-22 Center Street**, the engineer has to be at another meeting out of town so if everyone is willing we can switch them up so that he can make his second meeting.

[All Members: Agree.]

Member Matisse: Has signs that say zoning strictly enforced, to discourage people from building without permits.

D. INFORMATION ITEMS:

Adjourned until the next meeting on September 25th on the third floor at 6:30pm.

E. CORRESPONDENCE: None

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3. **COMMUNICATIONS:** None

4. **EXECUTIVE SESSION:** None

MEETING ADJOURNED: Member Barilli made a motion to adjourn. Seconded by Member Mazzella. All ayes. Motion is carried.

RESPECTFULLY SUBMITTED
Anisetta Valdez, Zoning Board Secretary