

**VILLAGE OF ELLICOTTVILLE
ZONING BOARD OF APPEALS
MEETING MINUTES JULY 5, 2022**

PRESENT: Fred Musolff, Chairman
Dan Mergenhagen, Member
Michael Painter, Member
Harry Weissman, Member
Donna Baldwin, Secretary

ALSO PRESENT: Greg Keyser-Village Planner, Kelly Fredrickson-CEO, Richard Stanton-Village Attorney, Jacob Alianello-MDA Consulting Engineers, Elaine Northrup-Applicant, Alexander Basinski-Attorney, Craig Winters-Applicant, Michelle Winters-Applicant, Greg Cappelli, Paul Candino

Mr. Fred Musolff, Chairman called the meeting to order at 5:30 p.m. and opened the public hearing for **VZBA-2022-074, 11 Madison Street, Area Variance requests** and asked the applicant to present the project.

Mr. Jacob Alianello, representing Elaine Northrup presented the proposed plans for a new single-family residence with adequate dimensions to meet her physical needs as she ages and includes an accessory apartment to accommodate a live-in caretaker when the need arises. The site will be graded to drain to a dry well on the north side of the property with a rain garden on the southeast side.

The area variances requested are: Minimum Side Yard setback (combined): required 30 feet, proposed 22 feet for a variance of 8 feet. Minimum Rear Yard Setback: required 35 feet, proposed 32.1 foot for a variance of 2.9 feet. Minimum Front Yard setback: required 25 feet, proposed 20 feet for a variance of 5 feet. The front of the house was moved forward to be in line with the neighboring houses on the street. There is a 16.5 foot alleyway (right of way) on the north side between 9 and 11 Madison Street.

An application will have to be made to the Village Planning Board for a Special Use Permit for the accessory apartment over the garage and for Architectural Design and Historic District review.

Mr. Musolff asked is the driveway curved?

Mr. Alianello said yes, it is a semi-circle.

Ms. Northrup said she could provide better parking options with the circular driveway.

Mr. Musolff asked if the fence is on Ms. Northrup's property?

Ms. Northrup said the fence is 10 inches off her property and noted that the property line is not straight.

Mr. Alianello noted that the lot is approximately 7,900 s.f.

Ms. Northrup stated that she has lived in the Village for over 50 years and appreciates the zoning code which she is trying to follow. She also noted that residents will maintain the alleyway which is part blacktop.

Mr. Paul Candino of 9 Madison Street said he is in favor of the proposed new single-family home. He asked if there was a preference to how they maintained the alleyway. Should it be concrete or blacktop?

Mr. Richard Stanton advised that maintenance of the alleyway is not an issue for this Board to address and should be taken to the Village Board for guidance.

Mr. Musolff asked for any questions or comments from the people attending. Nothing was submitted.

Moved by Mr. Weissman to close the public hearing for VZBA-2022-074, 11 Madison Street, area variance requests. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Musolff opened the regular meeting.

The Minutes of the June 7, 2022 meeting were read.

Moved by Mr. Mergenhagen to approve the Minutes of the June 7, 2022 meeting as read. Seconded by Mr Weissman. Ayes all. Carried.

Mr. Fusolff presented VBZ-2022-074, 11 Madison Street for discussion.

Mr. Keyser advised that the Board should make a SEQR determination to classify this project as a Type II Action before taking action on the variance request.

Moved by Mr. Weissman that the Zoning Board of Appeals classifies the proposed area variance requests as a Type II Action under Section 617.5 of the SEQRA Regulations. No further review under SEQR is required. Seconded by Mr. Mergenhagen. Ayes all. Carried.

Mr. Keyser stated that area variances are requested by an individual wishing to use their property in a manner that does not comply with the dimensional or physical requirements of the zoning regulations. In making this determination, the ZBA must consider the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance is granted. It must also grant the minimum variance necessary. He presented the 5 tests and the applicant's responses for the Board to consider:

- 1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area Variance.*

No. The owner is a long time resident of Ellicottville and has owned this lot for over 30 years. The owner is intimately familiar with the character of the neighborhood and proposes to fit the size, style and placement of the proposed house consistent with the neighboring residents and community.

- 2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?*

The benefit sought by the applicant is to build an accessible home for herself with room for a live-in caretaker, in her own community, on a lot that she has owned and maintained for many years. The minimum reasonable size for such a dwelling cannot be achieved without an area variance on this relative small parcel.

- 3. Is the requested area variance substantial:*

The requested area variance is 5 feet in front, 2 feet in the rear, and 8 feet on the side. The requested front variance matches the neighboring houses on either side, the side variance is against an alley which provides additional separation between residences, and the rear variance is minimal.

- 4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?*

No. The proposed turnaround driveway will not impact flow of traffic on Madison Street. Surface water runoff will be directed to permanent on-site stormwater control practices (rain gardens and dry wells) to prevent adverse impacts to adjacent properties. Lot coverage is below zoning limits for the parcel.

- 5. Is the alleged difficulty self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.*

The applicant has owned and maintained this vacant lot for over 30 years and now desires to build a home suitable for her needs on this lot as she ages. The required setbacks would result in a house that is too small to meet the needs of an aging resident. There are few remaining vacant lots in the village residential core.

Mr. Musolff asked if the Board members agree with the analysis of the five tests?

**Moved by Mr. Mergenhagen to accept the analysis of the five tests as presented.
Seconded by Mr. Painter. Ayes all. Carried.**

Moved by Mr. Mergenhagen to grant the area variances requested: Front Yard Setback variance of 5 feet, Combined Side Yard Setback of 8 feet and Rear Yard Setback of 2.9

feet for 11 Madison Street as per application materials submitted in VZBA-2022-074 from Elaine Northrup. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Musolff presented VZBA -2022-071, 7-9 Elk Street, area variance requests for discussion.

Mr. Alex Basinski, Attorney for Michelle and Craig Winters advised that in the Zoning Code an accessory building is defined as a building upon the same lot (or on a contiguous lot under the same ownership) as the principal building which is clearly incidental to and customarily found in connection with the principal building, or use and is operated and maintained for the benefit of convenience of the owners, occupants, employees, customers or visitors of the lot with the principal use. Under this definition, the structure located at 9 Elk Street is not an accessory building. It is not clearly incidental to th/e rented duplex located at 7 Elk Street. It is not operated and maintained for the benefit of convenience of the occupants or visitors of the duplex. In fact, it is wholly unrelated to those occupants. 9 Elk Street should be classified as a single-family dwelling.

The applicants have submitted letters from Mr. John Good of Real Property Consultants of WNY; Thomas Siener, Certified Industrial Hygienist and mold specialist; Oishei Children's Hospital; Charlie Coolidge, Construction Consultant which address the health, mold and safety issues that need to be resolved.

Mr. Richard Stanton, Village Attorney advised that he has raised the question of the application being for modifications or should it be a use variance which requires different documentation.

Mr. Basinski stated that this is a non-conforming single-family dwelling by definition and has been in use as such since 1984 prior to the adoption of the zoning code. We are proposing modifications to correct the health and safety issues with a proper egress/ingress to the second floor, a proper heating system with ductwork to alleviate mold issues. We have been to the Board several times with this issue and now we are being told the application should be a use variance not an area variance. We would like to move ahead with the process.

Mr. Stanton said the expansion of a non-conforming use is a use variance. My interpretation is this is an accessory structure to the principle structure on the lot and requires a use variance. I am here to define the law for the Board. Mr. Basinski is welcome to disagree with my analysis.

Mr. Mergenhagen asked what is the difference between an area variance and a use variance?

Mr. Stanton said the use variance runs with the land and is reviewed under different criteria.

Mr. Painter asked if adding a basement will create additional water issues on a lot that already has drainage issues?

Mr. Stanton said if the proposal does not change the footprint it is a repair.

Mr. Keyser advised that if the ZBA feels it has enough information for a meaningful public review it can set a public hearing for the August meeting

Mr. Basinski asked about the time frame to submit more information and documentation for a public hearing in August.

Mr. Keyser said that if documentation is received in 10 days it can be reviewed for the public hearing.

Moved by Mr. Mergenhagen to set a public hearing for VZBA-2022-71, 7-9 Elk Street, Winters for area variance requests for August 2, 2022 at 5:30 p.m. pending receipt of documentation and/or use variance application. Seconded by Mike Painter. Ayes all. Carried.

Mr. Musolff advised he received a letter from an attorney regarding future installation of 5G technology.

Mr. Keyser said allowing 5G technology may need to be addressed with changes to the zoning code. He will bring up the issue with the Village Board.

Mr. Musolff suggested that the August 2, 2022 meeting be held at the Town Center in order to be handicap accessible.

Mr. Fredrickson said the building is still being renovated.

Mr. Keyser said he will find out if there is a room available and book it for the meeting if possible.

Moved by Mr. Mergenhagen to adjourn. Seconded by Mr. Weissman. Ayes all. Carried.

The meeting was adjourned at 6:30 p.m.