

**VILLAGE OF ELLICOTTVILLE
ELLICOTTVILLE, NY 14731**

**PLANNING BOARD MEETING MINUTES
AUGUST 10, 2021**

PRESENT: Nancy Rogan, Chairperson
Sheila Burrell, Member
Sean Cornelius, Member
Damon Newpher, Member
Sandy Reed, Member
Greg Cappelli, Alternate

ALSO PRESENT: Gary Palumbo-Village Planner, Kelly Fredrickson-CEO,
Aaron Tiller-Architect, Jaob Alianello-MDA Consulting Engineers,
Michelle & Craig Winters- Applicants, Joanne & Tom Arunski,
David Parker-The Villager, Kathy Kellog-Ellicottville Now

AGENDA: VPB-2021-093- 5 East Washington Street-Cigar Lounge
Special Use Permit
Public Hearing August 10, 2021

VPB-2021-112- 9 Elk Street Winters Residence Alteration
Architectural Design Review

VPB-2021-108- 19 Parkside Drive- Courtney Stoll
Single Family Residence
Site Plan and Architectural Design Review

VPB-2021-109- 37 Washington Street-Kreinher Property- Inn
Special Use Permit

VPB-2021-110- 16 Washington Street- Loud Underground
Sign Permit Application- projecting sign

18 Washington Street-Dekdebruns- Status
Moratorium Committee- Status
2020 Comprehensive Plan Committee- Status

DISCUSSION: Nancy Rogan, Chairperson opened the public hearing for VPB-2021-093, 5 East Washington Street, Bradley Hurley, Special Use Permit for a Cigar Lounge at 5:30 p.m.

Gary Palumbo presented his staff report on this application to establish a “cigar lounge” in two of the commercial spaces. The applicant proposes to establish a new approximately 3,945 s.f. Cigar Lounge apartment within the 11,555 s.f. Building. The existing parking lot will be utilized. No exterior renovations are proposed. The building owner is working with the State and CEO on building wide modifications to become compliant with the floodplain regulations.

While a tobacco and cigarette store is “Permitted” as a retail commercial establishment, the applicant intends to also serve alcohol, which is only allowed with a Special Use Permit from the Planning Board.

This is an Unlisted Action under SEQR and a Short EA Part 1 is required. A determination of Significance will need to be made prior to taking action on the Special Use Permit. This project is exempt from 239 Referral to the Cattaraugus County Planning Board under Items 8 and 15 of the Exemption Agreement between the County and the Village.

It appears the general intent of the Village Comprehensive Plan, Zoning and general redevelopment policies can be met and the review criteria for a Special Use Permit can be met. The change in use is allowed in the VC-1 District. Following the close of the public hearing the Planning Board has 62 days to act on the application.

Gary Palumbo advised that one email was received in response to the public hearing notice which was published in accordance with local law. The email from the resident at 6 East Washington expressed concern about smoke and odor emissions. Is there a guarantee that 100% of smoke and odor from cigars will be contained and not emitted out into the open air? The second concern is cigar and wrapping litter that will most certainly be an issue out in the parking lot which will eventually blow out across the area.

Nancy Rogan noted that the intent is to have a private area with club facilities and a retail space for cigar sales. Is there a plan to exhaust the smoke?

Kelly Fredrickson said there is a plan to handle the smoke.

Nancy Rogan asked for questions or comments from the people attending? Nothing was submitted.

MOTION: Moved by Sheila Burrell to close the public hearing for VPB-2021-093, Bradley Hurley, 5 Washington Street, Special Use Permit. Seconded by Sandy Reed. Vote 4-0. Carried.

DISCUSSION: Nancy Rogan called the regular meeting to order with six members present. She presented the agenda for changes, additions or approval. The agenda was approved as submitted.

The Minutes of the July 13, 2021 meeting were read.

MOTION: Moved by Sean Cornelius to approve the Minutes of July 13, 2021 as read. Seconded by Damon Newpher. Vote 4-0. Carried.

DISCUSSION: Nancy Rogan presented 5 Washington Street, Special Use Permit application for discussion.

Sandy Reed asked how will club members be separated from the cigar sales?

Gary Palumbo said he did not know and Bardley Hurley, the applicant, is not present.

Nancy Rogan suggested that a condition of approval be that the plan have a viable exhaust or air filter system.

Mr. Fredrickson said an air filter system and an exhaust system are not the same.

Nancy Rogan suggested that an air filter or purifier in the HVAC system will be included in the plan prior to exhaust to the outside.

Damon Nwpher noted that some systems purify and circulate air.

Nancy Rogan noted that no signage is proposed at this time.

MOTION: Moved by Sandy Reed to determine that the Action (SUP) for a change in use establishing an approximately 3,945 s.f. Cigar lounge having alcohol sales and on-site consumption at 5 East Washington will not have a significant impact on the environment when compared to the criteria listed in Section 617.7 and to issue a Negative Declaration. The Planning Board grants a Special Use Permit for change in use establishing a cigar lounge having alcohol sales and on-site consumption at 5 Washington Street as described in application materials received June 21, 2021. The approval is granted with the following conditions:

1. The plan will include adequate air filtration and exhaust of smoke from the cigar lounge.

2. The Special Use Permit does not include signage. An application for a sign permit is required before installing a new sign.

Seconded by Sean Cornelius. Roll call vote: Sheila Burrell-aye, Sean Cornelius-aye, Damon Newpher-aye, Sandy Reed-aye. Vote 4-0. Carried.

DISCUSSION: Nancy Rogan presented VPB-2021-112, 9 Elk Street, Michelle & Craig Winters, architectural design review of proposed renovations to existing accessory structure.

Greg Cappelli, alternate said he is exiting the table and will recuse himself from discussion on this application.

Gary Palumbo presented his staff report on architectural design review of alterations to an existing residential dwelling. The existing 20'9" x 20'4" pre-existing non-conforming residential structure will be raised in height (22 inches) to allow a new foundation to be constructed in keeping with Section 7.5 of the Village Zoning which allows repairs and alterations to an existing non-conforming building.

Based on the plans submitted, it is understood that there will be no exterior renovations to the existing roofing, siding, windows or doors. The exterior modification is limited to the net increase in height by 22 inches to accommodate the new foundation. The foundation bump-out for the exterior access stair into the basement is within the allowable building envelope.

The pre-existing parcel is located in the Village Residential District where a single family detached dwelling is a "Permitted" use and one accessory apartment is allowed with a Special Use Permit (Section 3.A.2).

The subject parcel has 2 pre-existing dwelling units in the house (7 Elk) and 1 pre-existing dwelling unit in the converted accessory structure (9 Elk). Section 3A.2.G limits any property to a maximum total of two (2) dwelling units (a principal dwelling plus one apartment/lockout unit) shall be allowed on any single property in the Village Residential District. The pre-existing use is allowed to continue, but not expand. Raising the structure and repairing the foundation are allowed as an alteration under Section 7.5 provided they do not represent an expansion of the non-conforming use.

The plan is subject to architectural design review. Since there are no changes proposed to siding, roofing, windows and doors the standards in Section 10-9 are met. No public hearing is required for architectural design review. No referral to the Cattaraugus County Planning Board is required. This is a Type 2 Action under SEQR and no further review is required.

Mr. Palumbo advised that he contacted Richard Stanton, Village Attorney on whether this meets the test for non-conforming use. He read Mr. Stanton's email reply:

1. Any expansion of a non-conforming use would have to meet the traditional hardship test of not being able to realize any reasonable return on the property for any lawful use, and proof by dollars and sense proof. Since there does not seem to be an argument that the property cannot be utilized as a single family dwelling I do not know what the hardship proof could be.
2. Under the second case excerpted any expansion of the structure would trigger the use variance test. Thus if they wanted to add a basement for storage space that would trigger it. That being said, moving the cube up in the air, without adding subsurface space might not be expansion, no case law found on that, but adding a basement would be an expansion.

Nancy Rogan noted that when the Planning Board reviewed the plans at the work session it was discovered that there is not a 22 inch crawl space but a 7.5 foot basement proposed. Based on the information from Mr. Stanton adding a 7.5 foot basement is an expansion and not allowed. If the applicant wants to raise the structure 22 inches we will look at that. However we cannot approve as presented.

Sandy Reed asked, is the 22 inch crawl space an expansion?

Nancy Rogan said we will have to check with the Village Attorney on that. Digging down 7.5 feet is definitely an expansion.

Gary Palumbo said that if you make the dube bigger it is an expansion.

Nancy Rogan stated that the Board can table or deny the application. The applicants can come back with another plan.

Jacob Alianello, architect for the applicants, advised that the plan was always to put in a basement for the utilities under the existing structure. The plan before the ZBA was to have a basement. I have not spoken to the Village Attorney, but Section 7.7 where the unit is not defined as a dwelling unit. This is the minimum work to allow utilities. The building is supported by piers at grade. 22 inches is the minimum we can raise the building to allow for utilities.

Damon Newpher asked what would it take to make the property conforming? A subdivision of 3 units?

Gary Palumbo said subdivisions are not allowed in the Village Residential District. There is no way to make the lot conforming. The 3 units are the problem.

Jacob Alianello asked if adding an apartment to the garage is allowed?

Nancy Rogan said no. There is a moratorium on accessory apartments. She suggested we ask Richard Stanton to attend the September meeting.

Michelle Winters said this project is time sensitive. We have contractors lined up to repair the furnace issue. We are just trying to make our air quality better and prevent mold and mildew with a properly working furnace.

Nancy Rogan stated that the Planning Board cannot make decisions based on time sensitive issues. We can table or deny the application.

Greg Cappelli asked if the applicants could talk to the Village Attorney?

Gary Palumbo said he did not know, but would contact Mr. Stanton to see if it is ok to give his interpretation of the code to the applicants.

MOTION: Moved by Sheila Burrell to table VPB-2021-112, 9 Elk Street, proposed renovations to existing non-conformg structure, pending receipt of a plan that meets the zoning code. Seconded by Sandy Reed. Roll call vote: Sheila Burrell-aye, Sean Cornelius-aye, Damon Newpher-aye, Sandy Reed-aye. Vote 4-0. Carried.

DISCUSSION: Nancy Rogan presented VPB-2021-108, 19 Parkside Drive, Site Plan and Architectural Design Review of a proposed single family house.

Gary Palumbo presented his staff report on this application for Site Plan Review for a new approximately 3,038 s.f. single-family residence and attached 2 car garage on lot 17 of the Colton Corners Subdivision. The 14,000 s.f. lot is located in the Medium Density District.

Based on the proposed elevation drawings, the overall design style and shape of the house appears to meet the design standards and the house appears to fit the intended character of the new neighborhood. The roof shows typical architectural style shingles. Except on the rear and one side window, the windows appear to be double hung. The rear windows appear to be casement. The windows on the rear and right sides have a transom style pane above the main window. Exterior light is shown next to the garage doors and man-door on the right side. The site plan shows landscaping/foundation plants on all 4 sides.

Aaron Tiller, architect, representing the applicant said she wanted the transom style windows in the rear of the house. Is it ok as long as it is not in the front?

Sheila Burrell stated that it is ok if not visible from the front.

Mr. Palumbo noted that the zoning allows a floor area ratio of 25% or 3,500 s.f. maximum. The proposal shows 3,391 s.f. (24.2%) FAR not counting 627 s.f. of second floor attic storage space above the garage.

Aaron Tiller said he did not count the storage area as it is not living space.

Gary Palumbo noted this space is over an attached garage. The garage and space cannot be used as habitable space.

Nancy Rogan said we do not count the garage whether attached or detached unless it is used as habitable space. Can you calculate the house and attic space and meet the FAR?

Mr. Palumbo said he will recalculate the FAR using the 627 attic space and excluding the garage for the next meeting. The Planning Board needs to set a public hearing if they feel the application is complete.

MOTION: Moved by Sean Cornelius to set a public hearing for VPB-2021-108, 19 Parkside Drive, site plan and architectural design review of a single-family residence for September 14, 2021 at 5:30 p.m. Seconded by Damon Newpher. Roll call vote: Sheila Burrell-aye, Sean Cornelius-aye, Damon Newpher-aye, Sandy Reed-aye. Vote 4-0. Carried.

DISCUSSION: Nancy Rogan presented VPB-2021-109, 37 Washington Street, Special Use Permit for change of use of Kreinheder property to an Inn. She noted that the zoning has no definition of an Inn and the first floor of all buildings on Washington Street need to be commercial use per Section 5.7A only upper floors can be dwelling spaces. When looking up the definition of an Inn it includes food service with a person living on site similar to a B & B.

Gary Palumbo noted that he did not look at Section 5.7 A when preparing his staff report and suggested the Inn or boarding house designation as the structure cannot have a single family dwelling as the principal use.

Nancy Rogan advised that when we approved the move of the building from Monroe Street to Washington Street it was with the understanding it would be for retail commercial use. This is not an approvable application so there is no reason to move forward. The Planning Board should deny the application.

Mr. Palumbo noted that the applicant can come in with a plan that includes commercial retail on the first floor.

MOTION: Moved by Sandy Reed to deny VPB-2021-109, 37 Washington Street, Kreinheder application for a Special Use Permit to change the use of the commercial building to a 3-bedroom unit for transient use as it does not meet Section 5.7A.2 of the Zoning Regulations. Seconded by Damon Newpher. Roll call vote: Sheila Burrell-aye, Sean Cornelius-aye, Damon Newpher-aye, Sandy Reed-aye. Vote 4-0. Carried.

DISCUSSION: Aaron Tiller asked if he could re-work the plan with a lobby space on the first floor?

Nancy Rogan said we do not have a definition of an Inn in the Zoning Regulations and have to deny. You can resubmit a plan with commercial space on the first floor for consideration.

Aaron Tiller noted that Arlington Arms has apartments on the first floor.

Nancy Rogan stated that the Arlington Arms has been an apartment building since the 1940's.

Aaron Tiller advised that the Board approved a change in use for John Nelson at the former Ellicottville Inn from a law office to an apartment on the first floor.

Nancy Rogan said the apartment is at the rear of the building and the front of the building remains retail commercial on the first floor.

DISCUSSION: Nancy Rogan presented VSP-2021-110, 16 Washington Street, Loud Underground, sign permit application from Dee Dippel.

Gary Palumbo advised that this is an application for a projecting 37 inch by 15 inch rectangular sign. The applicant originally proposed to hang it from the existing Adventure Bound sign which did not meet Section 12-8.F.5 "Hanging signs exceeding fifty pounds in weight shall not be attached to or supported by frame buildings nor the wooden framework of a building. No hanging sign shall be secured with wire, strips of wood or nails, nor shall any hanging sign be hung or secured from any other sign".

The applicant has advised that the sign weighs approximately 3 pounds and is made of plastic poply-carbonate with aluminum on both sides and will be 95 inches off the ground.

Nancy Rogan noted that the Planning Board cannot approve the sign as it does not meet the Sign Regulations in the Zoning. She noted that it has already been hung.

Sandy Reed asked can we tell them it is illegal and make them take it down?

Nancy Rogan noted that they can hang it in a different location.

Sean Conrelius said he will recuse himself from discussion and voting on this application.

MOTION: Moved by Sheila Burrell to deny VSP-2021-110, 16 Washington Street, sign permit application from Dee Dippel for Loud Underground as the sign does not meet the Zoning

Regulations. Seconded by Sandy Reed. Roll call vote: Sheila Burrell-aye, Damon Newpher-aye, Sandy Reed-aye. Vote 3-0. Carried.

DISCUSSION: Gary Palumbo advised that Greg Dekdebrun is withdrawing his application for 18 Washington Street.

Gary Palumbo noted that the Moratorium Committee is charged with drafting the zoning language. A meeting was set for August 24, 2021 at 4:30 p.m.

Gary Palumbo advised that he had no update on the Comprehensive Plan.

DISCUSSION: Sean Cornelius advised that we need to have virtual access to meetings where we can see the room. We need to have a conversation with the Village Board about equipment to hold an open meeting.

Greg Cappelli said the Village Open Meeting Law will require us to have both virtual and live meetings.

Gary Palumbo said that during COVID he set the meetings up under the NY State open meeting law. If the Board is here meeting live we need a better system to stream meetings.

Nancy Rogan asked if Sean or Kelly could set up our meeting via Zoom or Teams?

Gary Palumbo noted that when we move the offices to the Town Center we will have a better communications system for streaming meetings.

Sean Cornelius advised that in the long term we need to make it look like a more open and transparent meeting.

Greg Cappelli said the Village Board needs to approve a Zoom account which is about \$150.00 a year.

Sandy Reed asked if there is a way for the ZBA and the Planning Board to meet at the same time for training which will show that we are working together.

Nancy Rogan advised that Southern Tier West has some great offerings for training opportunities for the fall seminar.

MOTION: Moved by Sheila Burrell to adjourn at 7:00 p.m. Seconded by Damon Newpher. Vote:4-0. Carried.

Submitted by Donna Baldwin, Secretary