

**VILLAGE OF ELLICOTTVILLE  
ZONING BOARD OF APPEALS  
MEETING MINUTES, APRIL 6, 2021**

**PRESENT:** Fred Musolff, Chairman  
Dan Mergenhagen, Member  
Mike Painter, Member  
Harry Weissman, Member

**ALSO PRESENT:** Gary Palumbo-Village Planner, Kelly Fredrickson-CEO, Aaron Tiller-Architect, Mark Marino-Applicant, David & Martha Mangan- Applicants, Peter Mangan, Kevin Kelly, John Sabatos-Applicant, Shelby Toth-The Villager

Mr. Fred Musolff, Chairman called the meeting to order at 6:00 p.m. and opened the public hearing for **VZBA-2021-016, 66 Elizabeth Street, Mark Marino, porch and garage reconstruction, front and side yard setbacks for front porch and side yard setbacks and height for garage.**

Mr. Aaron Tiller, representing the applicant, presented plans for the reconstruction project to add to the 6 foot wide front porch and wrap it around the side of the house. The existing garage/barn will be demolished and a new 24' x 24' 2 story garage with a covered area on the side will be constructed

Mr. Gary Palumbo presented his staff report on the appeals. The applicant seeks to demolish the existing accessory building currently non-residential and construct a new accessory building for a garage and accessory apartment. The applicant seeks relief from: the 25-foot minimum front yard setback; the minimum 10/30-foot side yard setbacks for the porch addition to the existing home; the minimum 10/30-foot side yard setbacks for a new garage/accessory apartment; and from the maximum height of the accessory structure.

The approximately 6,566 s.f. parcel is located in the VR District. A single family residence and accessory structure are "Permitted" uses in the VR District. The addition of an accessory apartment is a "Special Permit Use". The SUP is only for the establishment of the apartment, but its use for rentals less than 30 days is "Not Permitted" in the VR District in accordance with zoning amendment adopted July 2019. The porch extension and new accessory structure are subject to Site Plan and Architectural Design Review by the Planning Board.

Based on the information provided, the area variance requested are:

1. Minimum Front Yard Setback-Section 3A.2.C.4) -for porch: Required 25.0", provided 12.5' for a variance of 12.5' (50%).
2. Minimum Side Yard-Section 2A.2.C.2)-for porch: Required 10.0', provided 8.8' for a variance of 1.2' (12%).
3. Minimum Combined Side Yard-Section 2A.2.C.2) for porch: Required 30.0', provided

24.8' for a variance of 5.2' (17.3%)

4. Minimum Side Yard-Section 2A.2.C.2- for accessory structure: Required 10.0', provided 5.0' for a variance of 5.0' (50%)
5. Minimum Combined Side Yard-Section 2A.2.C.2)-accessory structure: Required 30.0', provided 17.5' for a variance of 12.5' (41.6%)
6. Maximum Height of Accessory Structure-Section 2A.2.H)- 75% of primary structure, Maximum Allowed 15'1", provided 19'11 1/2 " for a variance of 4'10" (30.3%)

Mr. Palumbo advised that he received a fax from Sally and Glyn Davis of 69 Elizabeth Street in support of the project in response to the public hearing notice which was published in accordance with local law.

Mr. Musolff asked for questions or comments from the people attending?

Mr. Musolff asked if the existing front porch covers the front of the house?

Mr. Tiller said no it sets about 2 feet back from each side of the house. The yellow area on the drawing is the new 6 foot porch which extends and runs along the side of the house.

Mr. Painter noted that the width of the addition on the house is not in line with the house.

Mr. Tiller noted that the porch will wrap around the side.

Mr. Palumbo noted that the dark line on the drawing is the property line not the side of the house. The variance request is 1.2 feet.

Mr. Musolff referred to the location of the accessory structure.

Mr. Palumbo said the building will be 5 feet from the property line.

Mr. Tiller said the west property line is 16 feet from the house.

Mr. Musolff asked can you move it so you don't need a variance?

Mr. Tiller said the side covered area shortens the side yard setback. If we remove it the garage will be 24 feet wide.

Mr. Palumbo advised that if you move the building 5 feet to the east and delete the covered area extension it would reduce the setback. Can you make the garage deeper and closer to the house? This would eliminate the need for two of the variances.

Mr. Mark Marino, applicant said he is agreeable to moving 5 feet to the east and deleting or adjusting the size of the covered area. He cannot move the building closer to the house as he needs room to drive into the garage.

Mr. Painter asked if the area to the right of the building is an existing concrete patio?

Mr. Tiller said no. This would be new concrete which could also be shifted to the right

Mr. Musolff asked how is the height of the accessory building determined?

Mr. Tiller said the house is smaller and the barn is comparable with the height of the house. The existing barn is non-conforming.

Mr. Palumbo advised that you can keep and use a non-conforming structure. If you demolish and reconstruct the new building needs to meet the current zoning code which is 75% of the height of the principal structure to prevent overbuilding on properties.

Mr. Mergenhagen asked can you or will you lower this structure?

Mr. Marino said yes we are willing to make adjustments. The existing barn is falling down and needs to be replaced.

Mr. Tiller said he cannot lower it more than 6 or 8 inches.

Mr. Mergenhagen asked if there is a way to get to the 75% requirement?

Mr. Tiller stated that the house is 1 ½ stories at 20 feet.

Mr. Mergenhagen noted that the accessory structure should be smaller than the principal house.

Mr. Tiller advised that the existing structure is 1.5 feet off the property line. Moving the new structure puts it 5 feet off the property line.

Mr. Palumbo noted that taking down and replacing a structure is a change in use and needs to meet the zoning. To rehab the existing structure and keep the height the cost cannot exceed 50% of the value. The ZBA needs to grant the minimum variance necessary to meet the applicants objectives.

Mr. Mergenhagen asked can you reduce the side walls to 16.1 feet?

Mr. Tiller said he could adjust both the apartment and garage.

Mr. David Mangan of 1 Adams Street advised that he is having the same issue with his application. We are trying to improve our property by demolishing a run down building and replacing it. Both our houses are lower in height which is our dilemma. We don't have two story houses. We need a variance to the height to meet our goal to improve the property.

Mr. Tiller said he can lower the height of the garage to 18 feet.

Mr. Painter referred to drawing A301 noting that the overhang on diagram A is 1 foot and the overhang on diagram B is 2 feet.

Mr. Tiller said they are two separate sections of the house. The house narrows at the back but he kept the same overhang.

**Moved by Mr. Weissman to close the public hearing for VZBA-2021-016, 66 Elizabeth Street, area variance requests. Seconded by Mr. Mergenhagen. Ayes all. Carried.**

**Mr. Musolff opened the public hearing for VZBA-2021-017, 1 Adams Street, David Mangan, Front and side yard setback and height variance requests.**

Mr. Palumbo presented his staff report on this application for 2 appeals seeking relief from the 25-foot minimum front yard setback and the maximum height of an accessory structure. The proposal is to replace the existing garage/barn with a new accessory building for the sole purpose of an accessory apartment. This is a corner property so it has a 25-foot minimum setback on both Adams and Elizabeth Streets.

The approximately 10,230 sf. parcel is located in the VR District. A single family residence and accessory building are "Permitted" uses in the VR District. The addition of an accessory apartment is a "Special Permit Use". The SUP would only allow establishment of the apartment and rental for periods less than 30 days is "Not Permitted" in the VR District according to the zoning amendment adopted July 2019.

Based on the information provided the area variances requested are:

1. Minimum Front Yard-Section 2A.2.C.2): for corner lot: Required 25.0' provided 20.0' for a variance request of 5.0' (20%)
2. Maximum Height of Accessory Structure-Section 2A.2.H)- 75% of primary structure): Maximum allowed 15'4 1/2", provided 19'1" for a variance of 3'8 1/2".

According to the application materials the existing house has a floor area ratio of .21, not including the additional 1,052 s.f. of accessory building which brings the total FAR to .31 which exceeds the maximum .25 ratio (which includes a bonus for the second floor).

Mr. Aaron Tiller, representing the applicant presented the proposal. The existing non-conforming barn is 17 feet from the Elizabeth Street setback, The new structure will be moved back to 20 feet to allowing parking in front of the structure. The proposed accessory structure is comparable with the existing structure. He can reduce the height if necessary.

Mr. Musolff asked for questions or comments from the people attending?

Mr. Palumbo advised that he received 8 emails in response to the public hearing notice which was published in accordance with local law. All were in favor of the proposal, but were not specific to the zoning or criteria in the balancing tests.

Mr. David Mangan, applicant said that he has 6 children with spouses, one who is handicapped and he needs the additional space. In 2015 the same project was approved but due to an accident he could not proceed at that time. The barn is falling down and needs to be replaced. The new structure is for family use and will not be rented.

Mrs. Martha Mangan said they need to add a bathroom in the house and will be losing a first floor bedroom for the handicapped person. The handicap access first floor bedroom in the barn will replace the one in the house. The new structure is the same size and height as the existing barn.

Mr. Palumbo asked Mr. Tiller if he could make the structure wider and move it closer to the house to eliminate the need for the variance on Elizabeth Street?

Mr. Tiller said that if he makes it wider the roof pitch goes up 5 feet.

Mr. Mergenhagen asked if it could be a one story structure?

Mr. Palumbo noted that that would change the floor area ratio.

Mr. David Mangan said they would lose the parking spaces.

Mr. Peter Mangan said the design was to rebuild at the maximum square footage to preserve the design that is currently there. This is not a massive building.

Mr. Musolff noted that currently there are 2 structures side by side.

Mr. Tiller said there is 2 feet between them currently. By moving the new structure 5 feet there will be 7 feet between the buildings.

Mr. Palumbo asked if the roof on the loft area could be lowered?

Mr. Mangan asked what height are you looking for?

Mr. Tiller said he could lower it by 8 inches to 18'5"

Mr. Mergenhagen asked is the roof at 6/12 pitch?

Mr. Tiller said yes.

Mr. Kevin Kelly said he lives across the street and the height does not look inappropriate.

**Moved by Mr. Mergenhagen to close the public hearing for VZBA-2021-017, 1 Adams Street, area variance requests. Seconded by Mr. Painter. Ayes all. Carried.**

Mr. Musolff opened the public hearing for **VZBA-2021-023, 31 East Washington Street, John Sabatos, area variance requests to side yard setbacks and height.**

Mr. Aaron Tiller, representing the applicant presented the proposal to add a second story with a 8'x19'6" porch to the existing 16'x22' garage.

Mr. Palumbo presented his staff report on this proposal to add a second story to the existing single-story accessory building (garage) in order to add a new bathroom and bedroom (which zoning defines as a lockout room). A new 8'x19'6" second story porch and exterior stair will also be added. This application is for 3 appeals seeking relief from the minimum 10/30-foot combined minimum side yard setbacks and from the maximum height of an accessory structure.

The approximately 16,323 s.f. parcel is located in the VR District. A single family residence and accessory building are "Permitted" uses in the VR District. The addition of a Lockout Room is a "Special Permit Use" by the Planning Board. The SUP would only allow establishment of the Lockout Room but its rental for periods less than 30 days is "Not Permitted" in the VR District according to the zoning amendment adopted July 2019.

Based on the information provided, the variances requested are:

1. Minimum Side Yard - Section 2A.2.C.2)- for accessory structure: Required 10.0', provided 5.9' for a variance of 4.1' (41%).
2. Minimum Combined Side Yard - Section 2A.2.C.2)- for porch: Required 30.0', provided 25.5' for a variance of 4.5' (15%).
3. Maximum Height of Accessory Structure - Section 2A.2.H) - (75% of primary structure): Required 17'3", provided 19'5" for a variance of 2'2" (-12.5%)

The proposed 19'5" height is 80% of the 24' high primary structure (house).

Mr. Palumbo advised that no written or verbal comments were received in response to the public hearing notice which was published in accordance with local law.

Mr. Musolff asked for questions or comments from the people attending?

Mr. John Sabatos, applicant said he is agreeable to lower the height to 76% or 72%.

**Moved by Mr. Mergenhagen to close the public hearing for VZBA-2021-023, 31 East Washington Street, area variance requests. Seconded by Mr. Painter. Ayes all. Carried.**

The Minutes of the March 2, 2021 meeting were read.

**Moved by Mr. Painter to approve the Minutes of March 2, 2021 as read. Seconded by Mr. Mergenhagen. Ayes all. Carried.**

Mr. Musolff presented VZBA-2021-016, 66 Elizabeth Street, area variance requests for discussion.

Mr. Palumbo advised that granting a setback or lot line variance is typically a Type II SEQR Action, pursuant to Section 617.5(c)(12) of NYS SEQR regulations. The ZBA should move to formally classify the project a Type II Action before it acts on the application.

Prior to granting the area variance, the ZBA must weigh the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance were to be granted. In making its decision, Section 19 of the Village of Ellicottville Zoning and Section 7-712-b of NYS Village Law require that the ZBA consider five criteria. NYS Village Law also requires the ZBA to grant the minimum relief necessary. The applicant's answers and the staff analysis of the five tests are provided in the staff report for the Board to consider.

Mr. Mergenhagen said he had no problem granting the front and side yard variances.

**Moved by Mr. Mergenhagen to determine that the variances requested are a Type II SEQR action, pursuant to Section 617.5(c)(12) of the SEQR regulations. No further review under SEQR is required and that the Zoning Board of Appeals finds that based on its review of the five criteria, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community and is the minimum variance necessary to meet the applicant's objectives and grants the following variances as per application materials submitted in VZBA-2021-016: 12.5' (50%) front yard setback for porch, 1.2' (12%) side yard setback for porch, 5.2' (17.3%) combined side yard setback for porch, 5.0' (50%) side yard setback for accessory structure, 12.5' (41.6%) combined side yard for accessory structure. Seconded by Mr. Weissman. Ayes all. Carried.**

Mr. Mergenhagen said the proposed height of the garage/apartment is too high. He asked Mr. Tiller if he could make it lower to meet the 75% zoning requirement?  
Mr. Tiller said he could reduce the height by 1 foot to 18' 11 ½".

**Moved by Mr. Mergenhagen that the Zoning Board of appeals finds that based on its review of the five criteria, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community and is the minimum variance necessary to meet the applicant's objectives and grants a variance to the height of the accessory structure not to exceed 19 feet as per application materials submitted in VZBA-2021-016. Seconded by Mr. Weissman. Ayes all. Carried.**

Mr. Musloff presented VZBA-2021-017, 1 Adams Street, area variance requests for discussion.

Mr. Palumbo advised that prior to granting an Area Variance, the ZBA must weigh the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance were to be granted. In making its decision, Section 19 of the Village of Ellicottville Zoning and Section 7-712-b of NYS Village Law require that the ZBA consider five criteria. NYS Village law also requires the ZBA to grant the minimum relief necessary. He offered his analysis of the five tests for the Board to consider.

Mr. Palumbo noted that granting a setback or lot line variance is typically a Type II Action, pursuant to Section 617.5(c)(12) of NYS SEQRR regulations. The ZBA should move to formally classify the project a Type II Action before it acts on the application.

**Moved by Mr. Weissman to determine that the variances requested are a Type II SEQRR action, pursuant to Section 617.5(c)(12) of the SEQRR regulations. No further review under SEQRR is required. Seconded by Mr. Painter. Ayes all. Carried.**

Mr. Mergenhagen said he has no problem granting the front yard variance, but the height needs to be lowered to closer meet the 75% requirement in the Zoning.

**Moved by Mr. Mergenhagen that the Zoning Board of Appeals finds that, based on its review of the five criteria, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community and is the minimum variance necessary to meet the applicant's objective and therefore grants a 5 foot (20%) variance to the front yard setback (Elizabeth Street) as submitted in application materials submitted in VZBA-2021-017. Seconded by Mr. Painter. Ayes all.**

Mr. Tiller said he can lower the height of the accessory building from 19'1" to 18'4".

**Moved by Mr. Mergenhausen that the Zoning Board of Appeals finds that, based on its review of the five criteria, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community and is the minimum variance necessary to meet the applicants objective and therefore grants a variance to the height of the accessory structure not to exceed 18'4" as per application materials submitted in VZBA-2021-017. Seconded by Mr. Weissman. Ayes all. Carried.**

Mr. Musolff presented VZBA-2021-023, 31 East Washington Street, area variance requests for discussion.

Mr. Palumbo advised that prior to granting an area variance, the ZBA must weigh the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance were to be granted. In making its decision, Section 19 of the Village of Ellicottville Zoning and Section 7-712-b of NYS Village Law require that the ZBA consider five criteria. NYS Village law also requires the ZBA to grant the minimum relief necessary. He offered the applicant's answers and the staff analysis of the five tests for consideration.

Mr. Palumbo noted that granting a setback or lot line variance is typically a Type II Action pursuant to Section 617.5(c)(12) of NYS SEQR regulations. The ZBA should move to formally classify the project as a Type II Action before it acts on the application.

Mr. Mergenhausen said he has no problem with granting the side yard variances.

**Moved by Mr. Mergenhausen that the variances requested are a Type II Action, pursuant to Section 617.5(c)(12) of the SEQR regulations. No further review under SEQR is required. Seconded by Mr. Weissman. Ayes all. Carried.**

**Moved by Mr. Mergenhausen that, based on its review of the five criteria, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community and is the minimum variance necessary to meet the applicant's objective. Therefore, the ZBA grants a 4.1 foot (41%) variance to the minimum side yard for an accessory structure and 4.5 foot (15%) variance to the minimum combined side yard for the second story porch as per application materials submitted in VZBA-2021-023. Seconded by Mr. Painter. Ayes all.**

Mr. Mergenhausen asked Mr. Tiller to offer a lower height that is closer to the 75% zoning requirement.

Mr. Tiller said he can lower the height from 19'5" to 18'10".

**Moved by Mr. Mergenhausen that, based on its review of the five criteria, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community and is the minimum variance necessary to meet the applicant's objective and grants a variance to the maximum height of the accessory**

**structure not to exceed 18'10" as per application materials submitted in VZBA-2021-023. Seconded by Mr. Painter. Ayes all. Carried.**

Mr. Musolff asked that a letter be written to the Village Mayor requesting that the ZBA be allowed to meet in person as soon as possible and that the ZBA Chair requests the use of the Town Center where social distancing can be maintained.

Mr. Weissman said that we could meet in the Village hall and have applicants and people attending call in.

Mr. Palumbo said he will write to the Mayor with the request.

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

The meeting was adjourned at 8:10 p.m.