

**VILLAGE OF ELLICOTTVILLE
ZONING BOARD OF APPEALS
MEETING MINUTES NOVEMBER 5, 2024**

PRESENT: Harry Weissman, Chairman
Dan Mergenhagen, Member
Anne Northrup, Member

ALSO PRESENT: Gregory Keyser-Village Planner, Kelly Fredrickson-CEO,
Aaron Tiller-Architect, Michelle Winters, Craig Winters-Applicants
Melanie Pritchard, Hillary Georgi, Stephanie Adams, Kirsten Anderson- 9
Elk Street, Robert Stephens, Beth Stephens-Applicants-11 Parkside Drive

Mr. Harry Weissman, Chairman, called the meeting to order at 5:30 p.m. and presented the agenda for changes, additions or approval.

Mr. Keyser asked to add a new application for review at 31 East Washington for an area variance to the rear yard setback.

Mr. Weissman asked to move the reading of the minutes to the end of the agenda. The agenda was approved as amended.

Moved by Mr. Mergenhagen to open the public hearing for VZP-2024-71, 11 Parkside Drive, Robert and Beth Stephens, area variance request. Seconded by Ms. Northrup. Ayes all. Carried.

Mr. Keyser presented the proposed project involving the construction of an 8' x 8' (64 s.f.) second story deck with stairs for access to the storage space over the garage. The applicant is appealing a zoning permit denial requesting a variance from the 25 foot rear yard setback requirement to 21.59 feet for 3.41 foot variance.

Mr. Weissman read the letter from Patra Lowes of 35 Mechanic Street which included: There is access to the area from inside the single family house, which leads one to believe that this could be intended to become a separate dwelling. Concerns are on what the lighting will be and its impact. The current lighting on the driveway side of the home is on constantly from dusk to dawn, and produces significant lighting of our yard. A double door is already in place on the second floor which is not consistent with the submitted floor plan.

The Site Plan Map versus EAF Mapping Summary Report are not consistent. Was there a property line change, if so does it affect this property and the property at 39/41 Mechanic Street, which may have been grandfathered in for rentals? Does this affect the possible number of rentals, and what would those numbers be for each property? What is required property size for multiple dwellings per unit?

In response to the letter, Mr. Weissman advised that 39/41 Mechanic is not grandfathered for rentals.

Mr. Keyser noted that the Village Planning Board granted subdivision of the property to allow for an easement for the Ellicottville/Great Valley Trail.

Mr. Stephens said that the lighting is on a timer and is on from 4:30 p.m to 11:00 p.m. He will check to make sure it turns off and that it does not shine in the neighbors yard.

Ms. Northrup stated that the concerns and issues expressed by Ms. Lowes do not fall under the ZBA's charge.

Moved by Mr. Mergenhagen to close the public hearing for TZP-2024-71, 11 Parkside Drive, Robert & Beth Stephens, area variance request to the rear yard setback. Seconded by Ms. Northrup. Ayes all. Carried.

Mr. Keyser presented his staff report on the appeal from Section 3A(4)(C)(5) to allow the construction of a second story deck with stairs less than the minimum 25-foot outback from a residential zoning district.

The ZBA classified the project as a Type 2 Action under SEQR on October 1, 2024. In determining whether to grant an Area Variance, 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. The Balancing Test criteria must be applied and if granted, the ZBA must only grant the minimum variance necessary.

Mr. Keyser offered the criteria and his general observations for the Board to consider:

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

Observation: The granting of an area variance to allow the construction of a second story rear deck closer than allowed to the rear lot would not be a unique condition. There is at least one other property (15 Parkside Drive) where an existing deck and/or building does not meet the rear setback requirement.

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

Observation: There appears to be at least two other alternatives to provide a second point of emergency egress for the residence. The first is to reduce the size of the deck and move the staircase closer to the face of the house. The second alternative is to locate the egress on the east side of that portion of the building.

3. Whether the requested area variance is substantial?

Observation: The ZBA should determine if the request for a 3.41 foot variance or 13.6 percent from the minimum requirement is substantial based on its findings with the other criteria.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Observation: The ZBA has classified the project as a Type 2 SEQR Action, determining that there will be no significant adverse impacts on the environment.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of an area variance?

Observation: The difficulty appears to be self-created. There appears to be other alternatives and a second point of egress, while beneficial to the property, does not appear to be required by the New York State Uniform Fire Prevention and Building Code.

ZBA members agreed with the staff analysis of the Balancing Test.

Mr. Keyser noted that the deck will require architectural design review by the Village Planning Board.

Moved by Mr. Mergenhagen that based on a review of the balancing test criteria for an area variance, a 3.41 foot variance from the minimum 25 foot residential rear yard setback requirement for the construction of a 8 foot by 8 foot second story deck with staircase be granted at 11 Parkside Drive (tax parcel 55.027-2-38.3) as per materials submitted in TZP-2024-71 by Robert & Beth Stephens with conditions:

- 1. The proposed 8 foot by 8 foot deck with stairs will be submitted to the Village Planning Board for Architectural Design Review.**
- 2. Lighting will shine down and be night sky compliant and not spill on to neighboring properties.**

Seconded by Ms. Northrup. Ayes all. Carried.

Mr. Weissman presented VZP-2024-34, 7-9 Elk Street, Craig & Michelle Winters, a request for a Use Variance and 3 Area Variances.

Ms. Stephanie Adams, Attorney, representing the applicants presented information on the proposal to demolish an existing structure and construct a new 2-story single-family detached dwelling. The present use of the property is non-conforming, involving two principal residential uses, a single-family detached dwelling and a two-dwelling structure. The proposal is the smallest footprint needed to build the exact use of the dwelling as it is utilized today, but with the necessary elements of the safe stairwell; proper ventilation; and protection from stormwater events. The new construction will meet Village and NYS Building Codes for health and safety including appropriate fire egress.

Ms. Hillary Georgi, Architect, presented a site plan and is proposing a design that will deal with the water issues by raising the first floor elevation higher or at street level. This will create a safe space for mechanicals. An 8 foot rear addition is proposed with a 3 foot wide

staircase as a means of egress to the second floor with a second story egress window. This will fix the multiple issues with the existing structure.

Ms. Melanie Pritchard, Realtor, advised she was the agent who handled the sale of the property 13 years ago. She read the real estate description of the property at the time of the sale and noted that no one questioned the description or provided knowledge of the water issues. The Winters were never advised that the property was non-conforming. They have paid taxes for 13 years and the loss of the cottage will affect their return on the investment. Based on today's costs and the value of the cottage at time of purchase there is an 80 percent loss.

Mr. Keyser said he raised the question of how the property is used. Is the cottage an accessory unit or is it considered a 2 residence property?

Ms. Adams advised that the applicants want to maintain the property and use it with two dwellings.

Mr. Weissman noted that the description of the property on the tax rolls is 3 dwelling units. I do not agree with the return value. Will you supply confidential financial evidence to support your claim?

Ms. Adams noted that there is also loss of use.

Mr. Weissman asked why raising the building with a crawl space was not an option?

Mr. Keyser noted that the Village Attorney advised that currently this is an illegal non-conforming use and to make it a legal non-conforming use a Use Variance is needed.

Ms. Northrup asked is this one parcel of land?

Mr. Weissman said yes, however each structure has a number.

The Village Residential District only allows single-family houses. What is the financial evidence to the value?

Mr. Mergenhagen said you can just go up in the same footprint.

Ms. Geogri said we need area variances to meet the fire and building codes.

Mr. Weissman noted that there are other 3 and 4 unit homes in the Village. I can maintain my 3 unit building but cannot expand it.

Ms. Adams said you could request a use variance.

Mr. Weissman said he does not feel the application is complete. Competent financial evidence that the applicant cannot realize a reasonable return has not been provided. He would like Mr. Stanton, Village Attorney present at the December meeting.

Ms. Adams said she wants to make sure the Board has the information they need and that Mr. Stanton is at the meeting.

Mr. Keyser asked have you consulted an engineer?

Mr. Mergenhagen noted that the water issues have to be addressed.

Mr. Weissman presented VZP-2024-79, 7 Park Square, Andrew & Tori Jenis, a request for a use variance and area variance.

Mr. Keyser presented the appeal to a zoning permit denial requesting a use variance to allow the expansion of a non-conforming use and area variance to allow the construction of a front porch less than the minimum setback requirement from the front property line.

Mr. Aaron Tiller, representing the applicant, presented the proposal to construct a new 10 foot by 12 foot mudroom and renovate the existing 8 foot wide front porch including elevation drawings.

Mr. Keyser advised that the present use as a single family residence is not permitted in the VC-1 District. The current structure was constructed in 1817 and is listed on the New York Register of Historic Places. Per Section 7.7: A non-conforming use shall not be changed or extended within a building or upon the same lot nor shall the non-conforming building or structure be expanded, except as provided by the procedures in Section 19.4.A. The expansion of the footprint with the new mudroom addition and expanding the size of the front porch require a use variance.

The proposed front porch will be constructed approximately 6.1 feet from the 10 foot required setback for a variance of 3.9 feet.

The project meets the definition of a Type 2 Action under 617.5(c)(11) involving the expansion of a single-family residence and is not anticipated to have any significant adverse impacts and no further review under SEQR is required. The ZBA should classify the project as a Type 2 Action before acting on the variance request. If the Board feels the application is complete a public hearing can be set for the December meeting.

Mr. Weissman said he did not believe the intent of the zoning code was to prevent a single family home, especially an existing residence, from renovating or expanding. This will be a recurring problem in the VC Districts. The ZBA should make an interpretation of the zoning with regard to aspects that do not make sense. A Use Variance should not be required to maintain an existing structure in VC-1, VC-2 or VC-3.

Mr. Keyser advised that the ZBA should set a public hearing, make a zoning interpretation that a use variance is not required, and make a SEQR determination if the application is complete.

Moved by Ms. Northrup to set a public hearing for VZP-2024-79, 7 Park Square, Andrew and Tori Janis, area variance request to allow the construction of a mudroom and front porch for December 3, 2024 at 5:30 p.m. Seconded by Mr. Mergenhagen. Ayes all. Carried.

Mr. Weissman presented VZP-2024-75, 31 E. Washington Street, John Sabatos, area variance request to the side yard setback.

Mr. Keyser presented this proposal that involves the construction of a new 12 foot by 24 foot (288 s.f.) pavilion. The applicant is appealing a zoning permit denial requesting a variance from the total side yard setback requirement. Per Section 3A(2)(C0(2) the total side yard setback is 30 feet. The total side yard setback for the proposed pavilion is 26.8 feet for a 3.2 foot variance or 10.6 percent from the minimum requirement.

Mr. Aaron Tiller, representing the applicant, advised that a variance was granted previously for a 2 story garage with accessory apartment. However the garage and apartment were built as one story. The proposed picnic pavilion will be open. There are no walls.

Mr. Keyser noted that the project meets the definition of a Type 2 Action under 617.5(c)(12) involving the construction of an accessory residential structure. As a Type 2 Action the project is not anticipated to have any significant adverse impacts and no further review under SEQR is required. The ZBA should classify the project as a Type 2 Action before acting on the application. If the Board feels the application is complete a public hearing can be set for the December meeting.

Moved by Ms. Northrup to classify the project as a Type 2 Action under 617.5(c)(12) involving the construction of an accessory residential structure. No significant adverse impacts are anticipated and no further review under SEQR is required. Seconded by Mr. Mergenhagen.

Moved by Ms. Northrup to set a public hearing for VZP-2024-75, 31 E. Washington Street, John Sabatos, area variance request to the total side yard setback for December 3, 2024 at 5:30 p.m. Seconded by Mr. Mergenhagen. Ayes all. Carried.

The Minutes of the October 1, 2024 meeting were read.

Moved by Ms. Northrup to approve the Minutes of October 1, 2024 as read. Seconded by Mr. Mergenhagen. Ayes all. Carried.

Mr. Keyser noted that he will place the reading of the Minutes at the end of the meeting agenda going forward.

Moved by Mr. Mergenhagen to adjourn. Seconded by Ms. Northrup. Ayes all. Carried.

The meeting was adjourned at 6:45 p.m.

