

**VILLAGE OF ELLICOTTVILLE  
ZONING BOARD OF APPEALS  
MEETING MINUTES JANUARY 3, 2023**

**PRESENT:** Fred Musolff, Chairman  
Michael Painter, Member  
Harry Weissman, Member

**ALSO PRESENT:** Gregory Keyser- Village Planner, Kelly Fredrickson-COE, Aaron Tiller- Architect, Steve Young-Applicant, Jeff Hayes-Applicant

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

**Moved by Mr. Weissman to adopt the agenda as presented. Seconded by Mr. Painter. Ayes all. Carried.**

Mr. Musolff opened the public hearing for VZP-2022-219, 20 Rockwell Avenue, Steve Young, a request for area variances to the minimum side yard and rear yard setbacks. He asked for questions or comments from the people attending.

Mr. Keyser stated that the applicant is requesting area variances to allow the construction of a 26' x 34' garage to be located less than the minimum side yard and rear yard setbacks. The variance requests are: Minimum Side Yard setback (east side)- required 15 feet, proposed 2.4 feet for 12.6 foot variance. Minimum Rear Yard setback- required 10 feet, proposed 5 feet for a 5 foot variance.

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

**Moved by Mr. Painter to close the public hearing for VZP-2022-219, 20 Rockwell Avenue, Steve Young, area variance request to minimum side yard and rear yard setbacks. Seconded by Mr. Weissman. Ayes all. Carried.**

The Minutes of the December 6, 2022 meeting were read. Corrections were made.

**Moved by Mr. Weissman to approve the Minutes of December 6, 2022 as corrected. Seconded by Mr. Painter. Ayes all. Carried.**

Mr. Musolff presented VPZ-2022-219, 20 Rockwell Avenue, area variance requests for discussion.

Mr. Keyser noted that the Board classified the request as a Type 2 SEQR Action and deemed the application complete at the December 6, 2022 meeting. No referral to the Cattaraugus County Planning Board is required.

An area variance is the authorization by the ZBA for the use of land 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.

Mr. Keyser presented the 5 criteria for the balancing test, the applicant's and the staff comments for the Board to consider. The Board members agreed that the 5 criteria of the balancing test are met.

**Moved by Mr. Painter that based on its review of the five tests and the application materials in VZP-2022-219 received from Steve Young, The Zoning Board of Appeals finds that the benefit to the applicant outweighs any detriment to the health, safety or welfare of the neighborhood or community and therefore, grants the following area variances for 20 Rockwell Avenue:**

- 1. Minimum Side Yard Setback (east side)- required 15.0 feet, proposed 2.4 feet for a 12.6 foot variance.**
- 2. Minimum Rear Yard Setback- required 10.0 feet, proposed 5.0 feet for a 5 foot variance.**

**Seconded by Mr. Weissman. Ayes all. Carried.**

Mr. Keyser advised that no Architectural Design Review is required and Mr. Fredrickson can issue a building permit.

Mr. Fred Musolff presented VZP-2022-230, 29 Elizabeth, Jeff Hayes, a request for a use variance in order to construct a two story addition on the rear of the existing house.

Mr. Keyser presented his staff report on this request for a Interpretation and Use Variance from Section 7.7 of the Village Zoning to allow the expansion of a non-conforming building. The applicant is proposing to remove a portion of the current structure and construct a new two-story 2,352 sq. ft. addition.

The current use of the property for a single-family dwelling is permitted in the Village Residential District and the proposed improvements meet dimensional requirements. However, the existing structure is a non-conforming building that does not meet the minimum side yard setback for the west property line. Pursuant to Section 7.7 of Village Zoning, 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)-Use Variance of the Local Law. The applicant is seeking an interpretation of the zoning from the ZBA.

Mr. Weissman advised that since the proposed addition meets the setbacks for the district this is not a Use Variance, but an area variance. Under the current criteria in Section 7.7 any non-conforming change will require a Use Variance which is difficult to obtain. He also noted that he was on the committee reviewing the zoning with regard to the moratorium on accessory apartments and he does not agree with the changes to the zoning as a result of their work. This is too restrictive. It takes away the Zoning Board of Appeals power to grant relief to property owners.

Mr. Hayes said his plan is to demolish the rear of the house and add a two-story addition which is located to meet the required setbacks in the zoning. The existing house is non-conforming.

Mr. Keyser asked is your interpretation to not consider any addition as a use variance? Most non-conforming uses are for things that do not fit in the normal use of the district.

Mr. Weissman stated that the ZBA should classify the zoning change as an error and that additions to existing structures should be reviewed under the area variance criteria. Mr. Hayes is asking for an area variance.

Mr. Painter asked how do we prevent outrageous changes to structures?

Mr. Weissman said the Village Planning Board has Architectural Design Review of all renovations or new buildings.

Mr. Weissman said that if the ZBA is asked to grant area variances over and over, it may be time to change the zoning.

Mr. Keyser noted that there is no definition for non-conforming buildings in the zoning. Only a definition for non-conforming uses. How does the ZBA want to move forward? Improving the property is an area variance. The applicant is not creating a new non-conforming addition. Mr. Weissman stated that the west side setback on the existing house is non-conforming. The addition meets the setback requirements. This project should just require a building permit.

Mr. Keyser said that the public hearing should be on the interpretation of the zoning.

Mr. Aaron Tiller asked, if extending a building does not make the setback worse or greater is it allowed?

Mr. Weissman said if the project is not making the non-conformity greater it should be allowed with a building permit.

Mr. Keyser said the ZBA will have to look at everything that may be a non-conforming use as applicants need to find relief to the zoning.

Mr. Musolff asked if the Board was ready to set a public hearing on the interpretation of the zoning for the February meeting?

Mr. Hayes asked after the ZBA acts on the project will he have to go to the Planning Board? Mr. Keyser said yes the project requires site plan and architectural design review by the Planning Board.

**Moved by Mr. Weissman to set a public hearing for VZP-2022-230, 29 Elizabeth Street, Jeff Hayes, a use variance request for an addition to a non-conforming existing house for February 7, 2023 at 5:30 p.m. Seconded by Mr. Painter. Ayes all. Carried.**

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

The meeting was adjourned at 6:15 p.m.