

**VILLAGE OF ELLICOTTVILLE
ZONING BOARD OF APPEALS
MEETING MINUTES, JANUARY 7, 2025**

PRESENT: Harry Weissman, Chairman
Daniel Mergenhagen, Member
Michael Painter, Member

ALSO PRESENT: Gregory Keyser-Village Planner, Kelly Fredrickson-CEO,
Aaron Tiller-Architect

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

Moved by Mr. Mergenhagen to open the public hearing for VZP-2024-79, 7 Park Square, Andrew and Tori Jenis, use and area variance requests. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Weissman presented the appeal to a zoning permit denial request for 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. The applicant is proposing to construct a new 10 foot by 12 foot mudroom and renovate the existing front porch.

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 of Section 19.4. The ZBA is being asked for a zoning interpretation on the expansion of a non-conforming use.

Mr. Weissman stated that he feels that single-family houses in VC-1 should not require a use variance for renovations to their homes. That was not the intent of the Zoning Code. This type of project should be considered as an area variance request. The house is in the Historic District Overlay Zone and on the New York State Historic Registry.

Mr. Keyser advised that the ZBA is an independent, quasi-judicial entity that among other things has the power to hear and decide on requests for interpretation of the Zoning Local Law.. In reversing a decision by the Code Enforcement or Zoning Enforcement Official, proof that the decision was incorrect is necessary based on a proper reading of the zoning regulations. In making this interpretation, the ZBA should consider the following:

1. Is the law clearly written but leads to an unreasonable, illogical or inappropriate result?
2. Is the law unclear and/or does it contain language or terms that is ambiguous?

Mr. Weissman stated that the language is ambiguous and it is not the intent of the Zoning Code to require a use variance for the 10 foot by 12 foot mudroom.

Mr. Mergenhagen and Mr. Painter agreed that a use variance is not required.

Mr. Mergenhagen asked dose the front porch need an area variance?

Mr. Keyser said yes.

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

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

Moved by Mr. Mergenhagen to close the public hearing for VZP-2024–79, 7 Park Square, Andrew and Tori Jenis variance requests. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Weissmen presented VZP-2024-79, 7 Park Square, Andrew and Tori Jenis, area variance request to Section 3A.7.D.1 Front Yard Setback. No setback is required on Washington Street from Jefferson to Mill Streets. No setback is required on Monroe Street. On all other streets in the district a 10 foot setback is required. The proposed front porch will be constructed approximately 6.1 feet from the front property line for a 3.9 foot variance.

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. In making this determination, the Balancing Test Criteria must be applied and if granted, the ZBA ust only grant the minimum variance necessary.

Mr. Weissman offered the five criteria and the staff comments for consideration:

- 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?**

Staff Comment: There appears to be other buildings in the immediate neighborhood that do not meet the front yard setback requirement. Expanding the front porch appears to match the front building line with 9 and 11 Park Square.

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

Staff Comment: There doesn't appear to be any other alternative to expanding the front porch.

- 3. Whether the requested area variance is substantial?**

Staff Comment: The ZBA should make a reasoned judgement as to whether the non-conformity being proposed is too great, as compared to the lawful dimensions allowed by the current zoning law.

Mr. Weissman Stated that the variance is not substantial as neighboring districts have zero setbacks.

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

Staff Comment: The proposed project is a Type 2 SEQR action, which suggests that due to the nature of the project there will be no adverse environmental impacts. The proposed Improvements do not change the use nor the intensity of the use of the property.

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?

Staff Comment: The difficulty does not appear to be self-created. The lot and building predate the current zoning regulations which makes it difficult to obtain building/zoning permits for most improvements without obtaining a variance.

Board members agreed with the analysis of the five Balancing Tests.

Moved. By Mr. Painter that based on a review of the zoning local law, the zoning official's interpretation of Section 7.7 is incorrect by virtue that the law contains language that is ambiguous, the existing single-family structure pre-dates the zoning, and the proposed improvements do not constitute an expansion of a non-conforming use, requiring a use variance and based on a review of the balancing test criteria, the benefit to the applicant outweighs any detriment to the health, safety and welfare to the neighborhood or community and a 3.9 foot variance from the minimum front yard setback requirement be approved. Seconded by Mr. Mergenhagen. Ayes all.

Moved by Mr. Painter to open the public hearing for VZP-2024-75, 31 E. Washington Street, John Sabatos, area variance request. Seconded by Mr. Mergenhage. Ayes all. Carried.

Mr. Weissman presented the appeal for Section 3A(2)(C)(2) of the Village Zoning Local Law to allow construction of a 12 foot by 24 foot (288 sf) pavilion with total side yard setback less than the minimum 30 foot requirement for the side property lines.

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 on one floor. The pavilion with roof will be on a concrete pad with open sides. There will be a fire pit and landscaping. The 10 foot minimum side yard setbacks are met but not the combined total of 30 feet. The Total side yard setback for the proposed pavilion is 26.8 feet.

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

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

Moved by Mr. Mergenhagen to close the public hearing for VZP-2024-75, 31 E. Washington Street, John Sabatos, area variance request. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Weissman advised that 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. In making this determination, the Balancing Test Criteria must be applied and if granted, the ZBA must only grant the minimum variance necessary. He presented the five criteria and staff comments 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?

Staff Comment: While it's unclear if there are other pavilions in the neighborhood there are approximately 10 to 15 properties with structures that may not meet combined setback requirement due to the respective size of the lot.

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?

Staff Comment: Due to the width of the lot and the fact that it tapers (narrows), there does not appear to be any reasonable alternatives under the law. Acquiring additional land will likely worsen existing non-conformances or create non-conformances on adjacent lots. More land cannot be acquired.

3. Whether the requested area variance is substantial?

Staff Comment: The ZBA should make a reasoned judgment as to whether the non-conformity being proposed is too great as compared to the lawful dimensions allowed by the current zoning law.

Mr. Mergenhagen said that the requested variance is not substantial

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

Staff Comment: The proposed project is a Type 2 SEQR Action, which suggests that due to the nature of the project there will be no adverse environmental impacts. The pavilion is an accessory and does not change the primary use of the property.

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

Staff Comment: The difficulty does not appear to be self-created. The lot predates the current zoning requirements which makes it difficult to obtain a building/zoning permit for more improvements.

Board members agreed with the analysis of the five Balancing Tests.

Moved by Mr. Mergenhagen that based on a review of the balancing test criteria, the benefit to the applicant outweighs any detriment to the health, safety and welfare to the neighborhood or community, a 3.2 foot variance from the minimum 30 foot total side yard setback requirement be approved. Seconded by Mr. Painter. Ays all. Carried.

The Minutes of the November 5, 2024 meeting were read.

Moved by Mr. Mergenhagen to approve the Minutes of November 5, 2024 as read. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Keyser advised that meetings on changes to the short-term rental law and increase in the fee for a permit are being held.

Mr. Weissman noted that CEDEDE LLC filed an Article 78 against the Zoning Board of Appeals with regard to denying their variance request from the 200 foot setback from the Village Residential District. There is not a site in the Village that meets the 200 foot requirement. The Village Board has reviewed the Cannabis Law and has removed the 200 foot requirement.

Mr. Keyser advised that CEBEDE LLC has submitted an application for a Special Use Permit for a change in use to establish a retail cannabis dispensary at 24 Washington Street. It appears they will use the whole first floor of the building.

Mr. Weissman noted that they have a New York State Cannabis License for 24 Washington Street.

Mr. Mergenhagen asked, how is the new village parking lot working out?

Mr. Fredrickson said it is being used.

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

The meeting was adjourned at 6:20 p.m.