

**VILLAGE OF ELLICOTTVILLE  
ZONING BOARD OF APPEALS  
MEETING MINUTES FEBRUARY 7, 2023**

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

**ALSO PRESENT:** Gregory Keyser-Town Planner, Kelly Fredrickson-CEO, Rich Rinko-Assistant CEO, Jeff Hayes-Applicant, Mike Moore

Mr. Fred Musolff, Chairman called the meeting to order at 5:40 p.m. and presented the agenda for changes, additions or approval. Mr. Keyser noted that Old Business should be 29 Elizabeth Street Jeff & Mindy Hayes.

**Moved by Mr. Weissman to approve the agenda as corrected. Seconded by Ms. Saunders. Ayes all. Carried.**

Mr. Musolff opened the public hearing for VZP-2022-230, 29 Elizabeth Street, Jeff & Mindy Hayes, Interpretation and Variance request for expansion of a non-conforming building. He asked for questions or comments from the people attending.

Mr. Jeff Hayes presented his plan to remove a portion of the current structure and construct a 2 story 2,352 sq. ft. addition to the rear of the existing non-conforming house at 29 Elizabeth Street. The house does not meet the minimum side yard setback. The addition will meet the minimum setbacks required in the zoning. He presented a site plan for the Board to review.

Mr. Keyser stated that the issue is the language in the zoning. 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 in Section 19(4)(A)- Use Variance of the Local Law. The extension of a currently lawful use to any portion of a non-conforming building, which building existed prior to the enactment of this zoning ordinance, shall not be deemed the extension of a non-conforming use.

The proposed addition does not affect or increase the current non-conformance, nor does it create any new non-conformances. The addition complies with the dimensional setback requirements and the overall increase in the building footprint complies with minimum lot coverage requirements.

The Village Attorney has indicated that a review of the statutory law is that a use variance is only required for the expansion of a non-conforming use, not for the expansion of a non-conforming structure which only requires an area variance.

Mr. Hayes noted that he is improving the property in a way that meets the zoning regulations.

Mr. Weissman advised that he and Mr. Musolff served on the committee that made the change to the zoning code. The ZBA granted variances to three accessory apartments which prompted the Village Board to form the committee to look at the variance regulations. He does not agree with the change as taxpayers need to come to the ZBA for relief from overbearing zoning. The applicant is coming to the ZBA for an area variance that doesn't need to be an area variance.

Mr. Keyser offered possible decisions for the ZBA members to consider:

- The ZBA determines that the zoning interpretation is correct, and that the expansion of a non-conforming building, regardless of the use, requires a use variance.
- The ZBA determines that the zoning interpretation is incorrect, and that the expansion of a non-conforming building, regardless of its effect on pre-existing non-conformances, requires an area variance.
- The ZBA determines that the zoning interpretation is incorrect, and that the expansion of a non-conforming building that does not affect pre-existing non-conformances or create any new non-conformances does not require any variances.

Ms. Saunders stated that if a non-conforming structure has an addition that is conforming a variance is not required. She referred to the site plan and asked how much are you raising the roof?

Mr. Hayes said about 2 feet to make the roof line aesthetically pleasing.

Mr. Fredrickson said the issue is between expanding a non-conforming use and expanding a non-conforming building.

Ms. Saunders said that if the applicant does not change the non-conforming structure the request should be an area variance.

Mr. Hayes asked, if I want to change the windows what happens?

Mr. Weissman said that change or replacement of existing windows is reviewed by the Planning Board under Architectural Design Guidelines.

Mr. Keyser said that you have to replace them in kind with a building permit.

Mr. Keyser read the email from Heather Sullivan at 1 Mechanic Street in response to the public hearing notice which was published in accordance with local law. She raised the following concerns:

1. 29 Elizabeth is in the flood zone.- Is the grade going to be changed/ lot filled, if so will a study be performed to assess the effect on the neighboring properties.
2. The plans appear to be for a two family dwelling. Will a portion of this property be for a short term or long term rental. The property owners have a history of allowing short term rentals in the existing house.
3. How does the owner intend to complete the tree removal and exterior constructions without access from the west side adjoining my property as I will not allow access.
4. While the existing structures setback does not conform with the current code, allowing

the doubling of the property profile along the same non-conforming setback would greatly affect the privacy and enjoyment of the neighbors.

Mr. Hayes offered his responses to the concerns:

1. There will not be any elevation change or grading on the property
2. The property has not been rented in 10 years and there are no plans to do short term or long term rentals. The house will remain a single-family dwelling.
3. The removal of 3 pine trees in the back yard will be done with access on my property.
4. The proposed addition meets the setbacks and does not increase the non-conforming existing house.

**Moved by Mr. Painter to close the public hearing for VZP-2022-230, 29 Elizabeth Street, Jeff Hayes, request for interpretation and variance from Section 7.7 of the Village Zoning. Seconded by Mr. Weissman. Ayes all. Carried.**

Mr. Musloff opened the regular meeting.  
The Minutes of the January 3, 2023 meeting were read.

**Moved by Mr. Weissman to approve the Minutes of January 3, 2023 as read. Seconded by Mr. Painter. Ayes all. Carried.**

Mr. Musloff presented VZP-2022-230, 29 Elizabeth Street, Jeff Hayes, request for interpretation and variance from Section 7.7 to allow the expansion of a non-conforming building for discussion.

Ms. Saunders advised that we need to address the language in the zoning and then address a variance for the change in height. She asked, how much is the roof being raised?  
Mr. Hayes referred to the plans and said 1 foot 4 inches.

**Moved by Mr. Weissman that the ZBA determines that the zoning interpretation is incorrect, and the expansion of a non-conforming building due to dimensional requirements does not require a variance as long as the use of the non-conforming building does not change. Seconded by Mr. Painter. Ayes all. Carried.**

Mr. Keyser advised that the ZBA must apply the balancing test criteria to consider the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community. Should the ZBA determine that a variance is to be granted, it must also grant the minimum variance necessary. He offered the five tests and staff analysis 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 the granting of the area variance.**

Raising the roof 1 foot 4 inches is not out of scale for the neighborhood and is within the height requirements in the Zoning Code.

**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.**

The height of the building will comply with the Zoning Code and will make the house more architecturally pleasing.

**3. Whether the requested variance is substantial.**

The 1 foot 4 inch increase in height is not substantial in relation to the surrounding structures.

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

The proposed use of the property as a single-family residence is not changing as a result of the area variance.

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

The difficulty is not self-created. The applicant purchased the property in 2004 and the current building was constructed in 1928 which predates the initial adoption of the Village Zoning Regulations in 1964.

Mr. Keyser advised that if the Board agrees with his analysis an area variance can be granted. Before granting a variance the ZBA must classify the projects as a Type 2 action under SEQR. No further review under SEQR is required.

**Moved by Mr. Weissman to classify the project as a Type 2 action under 617.5(c)(1) of SEQR involving the expansion of a single-family residence on an approved building lot. No further review under SEQR is required. Seconded by Ms. Saunders. Ayes all. Carried.**

**Moved by Mr. Weissman that based on its review of the balancing tests, the Zoning Board of Appeals determines that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community and grants the area variance to increase the height of the structure at 29 Elizabeth Street by 1 foot 4 inches as per materials submitted in VZP-2022-230 by Jeff Hayes. Seconded by Ms. Saunders. Ayes all. Carried.**

Mr. Keyser advised that the applicant should modify the plans and submit an application to the Planning Board for Site Plan and Architectural Design Review.

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

The meeting was adjourned at 6:40 p.m.