

**VILLAGE OF ELLICOTTVILLE  
ZONING BOARD OF APPEALS  
MEETING MINUTES AUGUST 6, 2024**

**PRESENT:** Harry Weissman, Chairman  
Anne Northrup, Member  
Mike Painter, Member  
Lisa Saunders, Member

**ALSO PRESENT:** Gregory Keyser-Village Planner, Kelly Fredrickson-CEO, Ed Marquez-CEBEDE, Brad Earley-CEBEDE, Dan Earley-CEBEDE, Greg Cappelli-Resident

Mr. Harry Weissman, Chairman, called the meeting to order at 5:30 p.m. and presented VZP-2024-033, CEBEDE, 24 Washington Street, area variance request from the residential district setback requirement for a proposed retail cannabis establishment. He noted that the public hearing was held on July 2, 2024 and the application tabled.

Mr. Greg Keyser advised that he sought legal advice from Richard Stanton, Village Attorney on behalf of the ZBA. Mr. Stanton advised that the application is an area variance and does not meet the criteria for a use variance as it is an allowed use. The local law prevents a dispensary within 500 feet of a public building, school or church. As the Village Planner I have to make a determination on the intent of the zoning local law as it applies to the application received. It appears that the local law needs to be amended to be more clear in defining public buildings. Does this include parks or areas frequented by children? The application before the Board is a proposal for a dispensary within 200 feet of the residential district. The Village opted in when New York State legalized cannabis and wrote a simple law which appears to need changes.

Ms. Saunders asked if there are apartments upstairs in the building at 24 Washington Street? Mr. Weissman advised that the dispensary is an allowed use. There is no on site consumption.

Mr. Keyser presented his staff report. The ZBA must satisfy SEQR requirements before making a final decision on the appeal. The ZBA should classify the project as an Unlisted Action and issue a Negative Declaration based on the Short EAF.

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 must be applied and the ZBA must only grant the minimum variance necessary.

Mr Weissman presented the five tests and the 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 granting of the area variance?**

The granting of the area variance to allow a retail cannabis establishment does not appear to produce an undesirable change or detriment to the neighborhood or nearby properties. While the affected property is zoned Village Residential, the actual use is for non-residential purposes and is separated by five commercial properties and a public alleyway.

Ms. Northrup said this question is subjective. It is hard to determine based on the local law and the intent.

**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?**

There does not appear to be any other options for the applicant to consider. The variance requested does not change by moving the use to a different part of the building or property. The setback requirement is applied to the property and not the building or the proposed use within the building.

Ms. Northrup asked does the variance go with the property?

Mr. Earley said he owns the building. Our license from New York state is for 24 Washington Street. The local law was not adopted when we applied for the license.

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

The request for a 54 foot variance of 27% from the minimum 200 foot requirement does not appear to be substantial based on the findings under criteria 1 and 4. It should also be noted that the original request was for a 78 foot variance, but was reduced to 54 feet after the ZBA noted that a portion of the affected property was in the VC1 district.

Ms. Northrup said that 27% is substantial.

Mr. Keyser noted that other options or undesirable changes to the neighborhood are part of this analysis.

Mr. Weissman noted that each request is weighed differently. Just the number of feet or the percentage is not the only criteria for determining if it is substantial.

Ms. Northrup said that a 27% request on a new zoning law is substantial.

Ms. Saunders noted that the Verizon property is part VR and part VC1.

Ms. Northrup advised that if property is zoned with 2 districts the larger portion takes precedence.

Mr. Keyser said that if more than 50% of the lot is in the VR district the regulations for that district apply.

Ms. Northrup noted that a cell tower was denied because the property is in the VR district.

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

Per Part 2 and 3 of the SEAF the Planning Department is recommending a negative declaration be issued which suggests the granting of this variance will not result in any significant adverse environmental impacts.

**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?**

The difficulty appears to be self-created This is not a pre-existing use nor is it reasonable to assume that the applicant was not aware of zoning regulations for cannabis establishments. A moratorium was in place prior to the applicant notifying the Village of its intent to open a cannabis retail establishment and zoning regulations were established prior to a zoning permit being filed.

Ms. Northrup said that the difficulty is self-created. She asked if any other comments were received after the close of the public hearing?

Mr. Keyser said no. He offered motions for the ZBA to consider and recommended granting the area variance request.

**Moved by Mr. Weissman that in accordance with Section 617 of SEQR Regulation, the Village of Ellicottville Zoning Board of Appeals classifies the request as a Unlisted Action as based on a review of the application material determines that no adverse impacts would be caused to the environment as a result of the granting of a variance for this project, therefore a determination of non-significance has been made and a Negative Declaration issued. Seconded by Ms. Northrup. Roll call vote: Lisa Saunders-aye, Mike Painter-aye, Anne Northrup-aye, Harry Weissman-aye. Carried.**

**Moved by Ms. Nortrup to deny the 54 foot area variance request from the 200 foot minimum setback to the Village Residential district as presented in materials in VZP-2024-033, by CEBEDE, LLC at 24 Washington Street. Seconded by Mr. Painter. Roll call vote: Lisa Saunders-aye, Mike Painter-aye Anne Northrup-aye Harry Weissman-nay. Carried.**

Mr. Keyser noted that the process played out following the zoning regulations. If the applicants file an Article 78 the ZBA adhered to the process. I am only an advisor to the board.

Ms. Saunders said we have a local law and I feel this is a stretch for significant requests based on the intent of the law.

Mr. Weissman said this is a significant learning experience for all 3 Village Boards. With the exception of adult use this is the only use that requires a setback variance. The ordinance is full of vague ambiguities. The Special Use Permit granted at 11 Martha Street is across the

street from a property zoned Medium Density and Village Commercial 3A. The Village Board rezoned the former American Locker property, but nobody remembered the rezoning. There is no place in the Village that is more than 200 feet away. The Village Board should have opted out with New York State on allowing cannabis operations.

Ms. Northrup noted that if things come up more and more the law needs to be changed. A law that wastes time and money for applicants and boards is not good.

Mr. Keyser advised that the Village Clerk and deputy clerk are reviewing the zoning regulations and updating it with the local laws that have been adopted. Once that process is completed the Boards can see what changes to the zoning need to be made.

The Minutes of the July 2, 2024 meeting were read. Corrections were made.

**Moved by Ms. Northrup to approve the Minutes of July 2, 2024 as corrected. Seconded by Mr. Weissman. Ayes all. Carried.**

Mr. Keyser advised that 7-9 Elk Street will be on the September agenda. The applicants are proposing to demolish the existing garage and add a garage and apartment to the principal structure. The Village Attorney has determined that this is an illegal non-conforming use if the applicant cannot make a case that the property is grandfathered. A use variance will be required for a triplex structure.

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

The meeting was adjourned at 6:25 p.m.