

**VILLAGE of ELLICOTTVILLE
ZONING BOARD OF APPEALS
MEETING MINUTES JUNE 6, 2023**

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

ALSO PRESENT: Kelly Fredrickson-CEO, John Scheene-Architect, Aaron Tiller-Architect,
William Stoll-Applicant, Sandra Reed-Cook-Applicant, Caleb Henning-
MDA Consulting Engineers

Mr. Fred Musolff, Chairman called the meeting to order at 5:39 p.m. and presented the agenda for changes, additions or approval.

Moved by Mr. Mergenhagen to approve the agenda as presented. Seconded by Ms. Saunders. Ayes all. Carried.

Mr. Musolff opened the public hearing for **VZP-2023-139, 38 Monroe Street, Nigel Hall, Area Variance request for the expansion of a non-conforming building.**

Mr. John Scheene, representing the applicant presented the plans to construct a 569 square foot second floor addition at the rear of the existing house. He noted that the 100 year old house has been added onto several times. The front yard and rear yard setbacks are already non-conforming. The footprint of the house will not change.

Mr. Musolff asked for questions or comments from the people attending.

Mr. Fredrickson 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. Mergenhagen to close the public hearing for VZP-2023-139, 38 Monroe Street, Nigel Hall, area variance request for the expansion of a non-conforming building. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Musolff opened the public hearing for **VZP-2023-143, 16 Mechanic Street, Jennifer Courtney and William Stoll, area variance request for the expansion of a non-conforming building.**

Mr. Aaron Tiller, representing the applicants presented the plans to construct a 594 s.f. addition to the existing single family structure. The existing porch will extend across the front of the house and the gable will be centered in the front facade.

Mr. Musolff asked for questions or comments from the people attending.

Mr. Fredrickson 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. Mergenhagen to close the public hearing for VZP-2023-143, 16 Mechanic Street, Jennifer Courtney and William Stoll area variance request for the expansion of a non-conforming building. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Musolff opened the public hearing for **VZP-2023-152, 7 Mechanic Street, Sandra Reed-Cook, area variance request for the expansion of a non-conforming building.**

Ms. Reed-Cook presented her project and advised that her house needed foundation work due to water runoff and in order to do so the existing front porch had to be removed. She is requesting an area variance to allow the construction of a new 6 foot wide porch across the front facade of the house which will prevent future runoff issues.

Mr. Musolff asked for questions or comments from the people attending.

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

Moved by Ms. Saunders to close the public hearing for VZP-2023-152, 7 Mechanic Street, Sandra Reed-Cook, area variance request for the expansion of a non-conforming building. Seconded by Mr. Weissman. Ayes all. Carried.

The Minutes of the May 2, 2023 meeting were read. Corrections were made.

Moved by Ms. Saunders to approve the Minutes of May 2, 2023 as corrected. Seconded by Mr. Mergenhagen. Ayes all. Carried.

Mr. Musolff presented VZP-2023-139, 38 Monroe Street, Nigel Hall, area variance request for expansion of a non-conforming building for discussion.

Mr. Fredrickson advised that the required rear yard setback is 35 feet and the proposed setback is 9.5 feet for a variance of 25.5 feet. The project meets the definition of a Type 2 action involving the granting of an area variance for a one-family residence. The ZBA should move to classify the project as a Type 2 Action. In the Planning Department's judgment the Balancing Test has been met and recommends that the area variance be approved.

The ZBA members reviewed the five Balancing Tests, the applicant's responses and the staff analysis.

Moved by Ms. Saunders to classify the project as a Type 2 Action involving the granting of an area variance for a one-family residence. No further review under SEQR is required. Seconded by Mr. Painter. Ayes all. Carried.

Moved by Mr. Mergenhagen that based on its review of the five Balancing Tests the Zoning Board of Appeals finds that the benefit to the applicant outweighs and detriment to the health, safety or welfare of the neighborhood or community and grants a variance of 25.5 feet to allow the rear yard setback to be at 9.5 feet where 35 feet is required to allow the construction of a rear addition to the existing house at 38 Monroe Street as per materials submitted in VZP-2023-139 by Nigel Hall. Seconded by Mr. Weissman. Ayes all. Carried.

Mr. Musolff presented VZP-2023-143, 16 Mechanic Street, Jennifer Courtney and William Stoll, area variance request for the expansion of a non-coforming building for discussion.

Mr. Fredrickson advised that the construction of the 594 square foot two-story addition will require the following variances: Side Yard setback- required 10 feet, proposed 7.9 feet for a variance 2.1 feet. Combined Side Yard setback-required 30 feet, proposed 22.9 feet for a variance of 7.1 feet. Front Yard setback- required 25. Feet, proposed 17.7 feet for a variance of 7.3 feet. The project meets the definition of a Type 2 Action involving the granting of an area variance for single-family residence. The ZBA should move to classify the project as a Type 2 Action. The ZBA should also review the Balancing Test including the applicant's responses and the staff analysis before acting on the application.

Moved by Mr. Weissman to classify the project as a Type 2 Action involving the granting of an area variance for a single-family residence. No further review under SEQR is required. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Weissman noted that there is information in the balancing test that the Board should consider and he presented the following:

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

Staff finds that an undesirable change may be produced in character of the neighborhood by granting the area variance. While there are other homes in the neighborhood with similar setbacks and the proposed addition does not increase or worsen any of the non-conformances, the structure will be less than 10 feet from the two-family dwelling at 12-14 Mechanic Street. It should be noted that it appears the structure at 12-14 Mechanic Street is on or in close proximity to the side lot line with 16 Mechanic Street. NYS Building and Fire Code requires a minimum separation of 5 feet between buildings.

Mr. Fredrickson advised that the space between buildings meets the 10 foot fire code requirement.

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

Staff finds that there may be an alternative for the applicant to construct an addition that meets the side yard setback requirement. The applicant is proposing an addition that maintains existing building lines. The width of the addition can be adjusted by approximately

2 feet to meet the setback. There does not appear to be an alternative that avoids the other two variances.

Mr. Tiller, representing the applicant, advised that the proposed design will make the wall flush the length of the house. Meeting the setback would put a jog in the wall.

3. Whether the requested variance is substantial?

Staff finds that the requested variance is not substantial. The requested variance for the proposed addition maintains existing building lines and does not increase or worsen current non-conformances.

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

Staff finds that the variance will not have an adverse effect on the physical and environmental conditions of the neighborhood. The property is not in a flood hazard area, nor does it affect any wetlands. The variance does not change the use of the property and will not have any long-term impacts to traffic, dust, noise or odor.

5. Whether the alleged 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?

Staff finds that the difficulty was not self-created. The current building and original porch were constructed before 1940 which pre-dates the current zoning regulations.

Mr. Weissman suggested that a condition of approval be that the first floor living unit in the accessory structure be removed and the area returned to garage/storage space.

Mr. Stoll said the apartment has already been removed and the area converted to vehicle and storage space.

Moved by Mr. Weissman that the Zoning Board of Appeals finds that the benefit to the applicant outweighs the benefit to the health, safety and welfare of the neighborhood or community and grants the following variances to allow the construction of an addition at 16 Mechanic Street:

- 1. Side Yard Setback-required 10 feet, proposed 7.9 feet for a 2.1 foot variance.**
- 2. Combined Side Yard Setback-required 30 feet, proposed 22.9 feet for a 7.1 foot variance.**
- 3. Front Yard Setback- required 25 feet, proposed 17.7 feet for a 7.3 foot variance,**

with the condition that the Code Enforcement Officer verify that the lower unit in the accessory structure has been converted to vehicle/storage use as per materials submitted in VZP-2023-143 by Jennifer Courtney and William Stoll. Seconded by Mr. Painter. Ayes all. Carried.

Mr. Musloff presented VZP-2023-152, 7 Mechanic Street, Sandra Reed-Cook, area variance request to allow the construction of a front porch on the existing non-conforming building for discussion.

Mr. Fredrickson advised that the applicant is requesting the following variance to allow construction of the 6 foot wide porch across the front of the existing non-conforming building: Front Yard Setback- required 25 feet, proposed 11 feet for a 14 foot variance. The project meets the definition of a Type 2 Action involving the granting of an area variance for a single-family residence. The ZBA should move to classify the project as a Type 2 Action. In the Planning Department's judgment, the Balancing Test has been met and recommends that the area variance be approved.

Moved by Ms. Saunders to classify the project as a Type 2 Action involving the granting of an area variance for a single-family residence. No further review under SEQR is required. Seconded by Mr. Mergenhagen. Ayes all. Carried.

The ZBA reviewed the Balancing Test and agreed with the staff analysis.

Moved by Mr. Mergenhagen that the Zoning Board of Appeals finds that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community and grants the 14 foot variance to allow the front yard setback line to be at 11 feet where 25 feet is required in order to construct a 6 foot wide front porch at 7 Mechanic Street as per materials submitted in VZP-2023-152 by Sandra Reed-Cook. Seconded by Mr. Weissman. Ayes all. Carried.

Mr. Musloff presented VZP-223-172, 15 Adams Street, Kenneth McGowen, area variance request to allow the expansion of a pre-existing non-conforming secondary dwelling unit for discussion.

Mr. Tiller, representing the applicant presented the plan to expand the interior space in the existing accessory structure. There is an existing 1,330 s.f. Apartment and he is proposing to increase it to 1,660 s.f. The exterior of the building and footprint will not change. The zoning does not call out what size apartment is allowed.

Mr. Fredrickson noted that the zoning stated that an accessory apartment can be 60% of the total square footage of the principal structure or 1300 s.f. whichever is greater. The Board should consider the application if there is enough information a public hearing can be set for the July meeting.

Mr. Tiller stated that the zoning does not regulate the size of a garage in an existing non-conforming use. It appears that this is not a stand alone guest house.

Mr. Weissman asked what constitutes a stand alone guest house? If there is only storage for a lawn mower is it a garage? He feels there is enough information to set a public hearing, but we need to research what constitutes a garage.

Ms. Saunders asked how can you increase a 1330 s.f. Apartment to 1660 s.f. Without increasing the footprint?

Mr. Tiller said that he will be converting storage space to apartment space within the existing structure. The footprint of the building will not change.

Mr. Tiller asked what size does the garage portion have to be to classify it as an accessory apartment?

Ms. Saunders asked what is the allowable maximum square footage for an apartment and how is it determined?

Mr. Tiller said that the 1660 s.f. Includes the garage area.

Moved by Ms. Saunders to set a public hearing for VZP-2023-172, 15 Adams Street, Kenneth McGowen, area variance request to allow the expansion of a pre-existing non-conforming accessory structure for July 5, 2023 at 5:30 p.m pending clarification of language in the zoning code. Seconded by Mr. Weissman. Ayes all. Carried.

Mr. Caleb Henning of MDA Consulting Engineers asked to address the ZBA with regard to 39 Martha Street, area variance for the expansion of a non-conforming structure. He noted that a public hearing was held at the May 2 meeting and the application was tabled per his request. He spoke with his clients and they decided to redesign the addition so that the roof height will remain as is at 27.7 feet with non-habitable storage space on the third floor. The construction of a new front porch across the width of the house will require a variance of 13.7 feet. The front yard setback requirement is 25 feet and the porch will be 11.3 feet. He presented the revised drawings and noted that he hopes for a decision from the ZBA tonight so he can present the plan to the Planning Board on June 13, 2023 for Architectural Design Review.

Mr. Fredrickson noted that the ZBA would only be considering the front yard setback.

Mr. Mergenhagen said he feels it is ok to consider the variance for 39 Martha Street at this time.

Mr. Fredrickson advised that the project meets the definition of a Type 2 Action under 617.5(c)(17) of SEQR involving the granting of an area variance for single-family residence. The ZBA should classify the project as a Type 2 Action. The Planning Department believes the Balancing Test Criteria has been met and recommends granting the variance.

Moved by Ms. Saunders to classify the project as a Type 2 Action involving the granting of an area variance for a single-family residence. No further review under SEQR is required. Seconded by Mr. Mergenhagen. Ayes all. Carried.

Moved by Mr. Mergenhagen that the ZBA finds that the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community and grants a 13.7 foot variance to the front yard setback to allow the construction of a porch at 11.3 feet from the setback where 25 feet is required at 39 Martha Street as per materials submitted in VZP-2023-119 by Daniel and Laura Riftkin. Seconded by Mr. Painter. Aye all. Carried.

Mr. Musolff asked if there is an update on the Greer Hill variance request?

Mr. Fredrickson advised that the applicant may change the plan so that a variance will not be necessary.

Mr. Musolff noted that the next meeting will be Wednesday July 5, 2023 at 5:30 p.m.

Mr. Musolff advised that the Local Government Conference will be at Houghton on Thursday June 8, 2023 for board members wishing to fulfill training hours requirements.

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

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