

June 4, 2021

Village of Ellicottville
Code Enforcement Officer
Kelly Fredrickson
17 Mill Street
Ellicottville, New York 14731

Re: Application for Zoning Permit on 9 Elk, Ellicottville, NY 14731

Dear Mr. Fredrickson;

Enclosed please find our application for a zoning permit, a site plan, proposed drawings, Zoning Board of Appeals letter plus application and application fee payment. As discussed, we are concurrently submitting the Zoning Board of Appeals Application with applicable supporting documents. We understand that the nature of our lot is non-conforming and as such, must be denied and reviewed by the Zoning Board of Appeals.

Please advise if we have missed anything in the documents to assist in the review of this proposal. Our anticipation for Village review is to catch this problem before the Fall weather causes the water to collect in our heating ducts again.

Thank you for all your advice and support to get this submittal in for review.

Sincerely,



Michelle Winters

Enclosed: Payment \$46 for Zoning Permit and \$275 for Zoning Board of Appeals Permit (Check #1137 for total \$321); and 8 copies of the following: Zoning Permit Application; Survey; MDA Consulting Engineers documents (half size drawings: SP1, A1, A2 and A3); Letter to the Zoning Board of Appeals; Zoning Board of Appeals Application; and 1 Full size drawings from MDA Consulting Engineers.

Current use of property:
Second home

Description of Proposed Project/Use (attach additional pages, survey and plans):

Raise building and pour basement to fix air quality problem and build 14 ft addition to address non-conventional issues

associated with the conversion of this building from garage to dwelling. After raising building surrounding land will be graded and landscaped.

Zoning Requirements from Town/Village Zoning Law

Front yard setback: 25' Rear yard setback: 35'
Side yard setback: 10' Combined side: 30'
Minimum lot size: as platted Width: _____
Height: 28' max Floor area ratio: 0.2 per lot (Village)
Usable Open space: At least 30%

Site Information will be as follows:

Size of site: 8916 Sq. Ft. Size of area to be developed: 280 (footprint) Sq. Ft.

Number of proposed lots: addition on current lot

Proposed method of Sanitary Sewage disposal: already on village sewer

Proposed method of Water Supply: already on village water

Main Structure will be as follows:

Construction type: wood-framed addition Front yard setback: 14.8 feet
Height: 2 stories, 21.2 feet Side yard setback: 7.5 feet
of family units: 3 Total of both side yard setbacks: 23.4 feet
Size of lot: 8,916 Sq. Ft. Rear yard setback: 26.3 feet
Usable Open Space: 78.8 % Floor area ratio: 0.35 (village)
Corner or interior lot? interior Other: _____

Accessory Building will be as follows:

Description:

Percentage of yard: _____ Height: _____ feet
Setback from rear lot line: _____ feet Setback from side lot line: _____ feet

Floodplain:

FIRM Zone _____ BFE _____
Flood Plain Development Permit Required? YES NO

ATTACHMENTS

Attach all relevant items listed in the Town/Village of Ellicottville Zoning Law for a zoning permit. Additional copies of all plans, documents and other application materials may be required. Please include copy of survey if available.

SIGNATURES

Applicant and Owner (if different) must sign the application.

I hereby certify that I have examined this application and know the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The acceptance or approval of this application does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction, land use or the performance of construction. I have read and am familiar with the Town/Village of Ellicottville zoning law that is relevant to this application(s).

Permission to inspect – I hereby consent to Town/Village of Ellicottville Staff inspection of the project site and adjacent property areas. Town/Village staff may enter the property without notice. Inspection may occur without the owner, applicant or agent present, If the property is posted with “keep out” signs or fenced with an unlocked gate, staff may still enter the property. Agency staff may take measurements, analyze site physical characteristics, take soil and vegetation samples, sketch and photograph the site.

Applicant Signature: Michelle Winters Date: June 4, 2021

Applicant must be (check all that apply): Owner Operator Lessee

Applicant Name:^{Print} Michelle Winters

Property Owner’s Signature (if different than applicant)
_____ Date: _____

Property Owner’s Name:^{Print} _____

Office use only:

Application Fee: \$46.00 _____

Received by: _____ on _____ (Date)

Project Number(s): _____

Zoning Permit Approved - May obtain building permit.

Denied – Not in conformance with following provision(s) of the Zoning Ordinance:

CEO Signature: _____

Date: _____

June 4, 2021

Re: Request for Area Variance at 9 Elk Street, Ellicottville, NY 14731

Dear Village Zoning Board of Appeals;

My husband and I have owned the lot and home located at 7 and 9 Elk Street in the Village of Ellicottville, since December of 2012. The property is an unusual "y-shaped" lot that includes an upper/lower duplex and a stand-alone building, each with it's own driveway. We understand that our site is a non-conforming use, "grandfathered" as is, due to property modifications made prior to changes in Village Zoning Laws. We understand the difficulties to assess requests for variances, while striving to adhere to guidelines designed to bring decades of Village building lots into compliance with newer regulations. Our building, lot and request for addition is non-conforming and we have been advised that the Village Planner and Code Enforcement Officer will have no choice but to deny our zoning application, based on setback requirements. For this reason, and the urgent need to fix an indoor air quality problem, we are submitting this letter and ZBA application simultaneously with the zoning permit application. Please understand that the basis of this application is health and safety of my family. Consequently, we respectfully submit the following description of the situation with our applications requesting an area variance.

Included with this letter and application are building plans with elevation sections and foundation plans from MDA Consulting Engineers. These plans presented to you have evolved out of necessity, with intent to improve our indoor air quality, fix a few problems related to the very low building elevation, while adding a 14-foot addition to the rear of building. This addition is to provide for enough room for a better staircase, access to airducts and utilities, storage and entrance. This does not change the intensity of use, but does help us to make corrections related to how this dwelling was built from a garage structure.

For the past 8 years, we have managed a problem with our heating ducts, where they periodically develop enough condensation to pool with water. As the furnace pushes hot air over this pooled water, humidity builds within our home causing mildew on all surfaces. This is a breathing hazard and nuisance at best. I worry that this problem is contributing to our health issues, as mold and mildew are known to cause sinusitis, coughing, asthma and other breathing related problems. When first discovered we had everything professionally cleaned and sanitized. Over the years, we have tried to prevent this, by running the heat to dry out ducts and running 2 dehumidifiers constantly. On the worst of days, we empty up to 1.5 gallons of water in a 24-hour period. On several occasions, Craig has replaced the 5 flex ducts, by digging a hole beside the home and back crawling on crushed stone for hours with less than 12 inches of clearance.

We consulted with heat and plumbing specialist, contractors for building lift options and engineers on groundwater and foundation conditions. We have met with Village Code Enforcement Officer, Kelly Fredrickson and hired MDA Consulting Engineers to help us evaluate all our options to improve this problem. It seems the permanent solution is to raise the building with a proper foundation. As we analyzed this problem and the cost to fix it, we find that merely lifting the building, while clearly

necessary, does not address any of the non-conventional issues that the building presents. While having a contractor on site, we would like to add a proper entryway and a conventional staircase that is easier to climb than the spiral staircase that currently exists. These corrections will also allow us to: fix a toilet flushing problem, which is practically horizontal and has little head/pressure to meet the street line; and to regrade the property and add landscaping to improve drainage. Lifting the building, making repairs and adding an addition will make this building more consistent with the character of the neighborhood, and appropriate scale next to adjacent homes. The addition of multiple trees, a rain garden and new shrubbery will improve rainwater overflow.

Intensity of use

Though this building is commonly known to have been a garage at one point, it has been a second home for multiple owners. We purchased it as a second home and use it year-round. Craig has worked in Ellicottville part time for 20 years this year and our daughter and I hold a variety of part time jobs, as well. We rented at other locations for a while and sought a single-family home, when this three unit property became available. The previous owner stayed in this building, while both the upper and lower units at 7 Elk were rented and still are by long-term renters. The building at 9 Elk is used exclusively by us and has 2 queen beds and 1 single bed (sleeps 5). The proposed addition will not change the intensity of use of this space as no additional beds will be added. The proposed addition allows us to relocate a bed into a space with headroom, to improve a very crowded entrance and provide a better staircase.

Defining the building

Shortly after purchase, we received a letter from Ellicottville requesting that we clearly identify this building as 9 Elk for the purpose of emergency response. We pay for water and utilities for 3 different units. The Village Local Zoning Law defines Accessory Building as follows: A building upon the same lot as the principal building and which is clearly incidental to and are customarily found in connection with such principal building or use and is operated and maintained for benefit of convenience of the owners, occupants, employees, customers, or visitors of the lot with the principal use. Though 9 Elk Street was originally constructed as an accessory building to 7 Elk, it no longer meets the Village definition of Accessory Building. In fact, it has not met this definition for multiple owners and decades of use as a stand-alone unit. We have omitted any request for variance related to accessory buildings for the reasons stated above and similar sentiments/conclusions derived from various conversations between our engineers at MDA Engineers, Gary Palumbo and Kelly Fredrickson.

Applicable zoning laws and request for variances

1. **Section 3A (2-F): Multi-Dwelling Uses** – We recognize that this property is a non-conforming land use to the Village Zoning Code in this VR district. As this was purchased as such, and has been this way for decades, we plead that this be a “grandfathered” condition of this property.
2. **Section 3A (2-C-2): Side Yards** – Zoning requirements for side yard setback is 10’. We currently have 7.3’ with our neighbor and the buildings taper closer together in the rear. In order to not make the side yard setback, non-conformance worse, we propose to slightly change the building orientation to parallel the neighboring building. We request this variance as 7.5’ side yard setback.
3. **Section 3A (2-C-3): Rear Yards** – Zoning requirements for rear yard setbacks is 35 feet. The proposed rear setback will be 23.4 feet. Though there is more than 60 feet of depth at an angle

off the rear of home, the rear setback is not possible to meet given the unusual shape of the property. The atypical Y- shape of the property limits makes it impossible to meet the Village's exact side and rear setback requirements. We request this variance as 23.4 ft rear yard setback.

4. **Section 3A (2-C-4): Front Yard** – Zoning requirement for front yard is 25'. Our proposal is to maintain the front yard position at 14.8 ft in order to maintain alignment with the adjacent homes. We request this variance as 14.8 ft front yard.
5. **Section 3A (2-C-6): Floor Area Ratio** – Floor area ratio for the Village Residential Zoning is a .2 ratio. Calculations for the square footage of 7 Elk is at 1970 sq. ft and 9 Elk is 656 sq. ft plus the request for addition at 560 square feet equals 3186 sq. feet total. With our lot size at 8,916 sq. feet, that makes our ratio equal to .35. We request floor area variance, which will help to make this building consistent with the character of the neighborhood.
6. **Section 7-5: Repairs and Alterations** - We understand the local zoning laws limit repairs to 50% of the value of the structure, but request that this assessment include only the cost to add 14 ft by 20 ft onto the structure. Those costs associated with raising the building should not be included in this calculation, as this work is "necessary to assure safe living conditions", as per the exclusion included in Local Law definition of substantial improvement. ERA Team VP Real Estate Broker, Melanie Pritchard, provided a market analysis and site comparables, which shows an average price/square foot on local selling prices as \$148. She also provided comparables for other properties with similar square footage and number of baths within the Village. The average List price for these properties is \$308,165. If we assume our 3 units to be equal, then 9 Elk could be valued a little over \$100,000. We do not yet have a cost to build this addition, but if we use the average selling price/sq. foot, then our cost to build the 14-foot addition is around \$42,000, which is less than 50% the value of the structure. We, therefore, believe that component of our application should be approved.

Improvements and Area Variance Consideration

We understand that much about our property is non-conforming and respect the concept to not make the non-conformance worse. Our proposed plans and investment will make this lot within the Village limits much more aesthetically appealing. The building will appear more to scale with other Elk Street properties and will not appear to be sinking or below street grade, as it is now. We will maintain horizontal siding with double hung windows, consistent with architectural guidelines and adjacent structures. Additionally, the property will be graded and landscaped with trees and shrubs.

These proposed improvements are part of a thoughtful approach to improve drainage and aesthetics in the neighborhood, while fixing problems within our home. By lifting the unit, we improve indoor air quality and head/ water pressure for flushing. As we do this, the site will be graded, with appropriate drainage. Currently there is a dry well in the back that fills during rain swells. We propose to hire a landscaper to design a rain garden, necessary drainage and tree plantings.

There is one component of our proposal that appears to bring our building into compliance and that is, Section 3A-2-C-5 of the zoning law, that requires that residential buildings have a minimum building size or footprint of 1,000 square feet. The current structure is substantially less than that. Though the addition of 14 feet onto a 20' X 20' structure seems substantial, the 280-sf footprint helps to meet the

minimum building size. This proposal still affords us a generous open space ratio of 79%, that greatly exceeds the Village's minimum open space requirement of 30%.

I appreciate your consideration of this proposal with various issues that are certainly non-conforming according to the latest Village Zoning Laws. We have made every effort to apply architectural, engineering, aesthetic and other reasonable measures to improve the conditions of this property. This weird-shaped lot makes it impossible to meet the requirements of Village Code, but all reasonable measures will be taken to improve the curb appeal and respect the requested variances. I ask that you consider the strange property shape, our use of the property and the urgency that we seek to correct air quality issues before the Fall season changes and forces condensation to build in the vents again. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Michelle Winters". The signature is written in a cursive, flowing style.

Michelle L. Winters
5 White Cedar Drive
East Amherst, New York 14051
michellewinters@verizon.net
cell: 716-316-9346



**TOWN AND VILLAGE OF ELLICOTTVILLE
BUILDING / CODE ENFORCEMENT
DIVISION**



17 MILL ST. ELLICOTTVILLE, NY 14731

Code Enforcement Officer: Kelly Fredrickson, (716) 699-4773

E-MAIL: kelly.fredrickson@evlengineering.com

Planner: Gary Palumbo, (716) 923-1325, E-MAIL: gary.palumbo@aecom.com

ZONING BOARD OF APPEALS APPLICATION

Property is in: TOWN VILLAGE App. # _____

APPLICANT INFORMATION:

Applicant's name: Michelle Winters Date: June 4, 2021

Mailing address: 5 White Cedar Drive, East Amherst, NY 14051

Cell Phone Number: 716-316-9346 E-Mail: michellewinters@verizon.net

Applicant must be (check all that apply): Owner Operator Lessee

Applicant's Engineer or representative: Jake Alianello, MDA Consulting Engineers, PLLC

Address: PO Box 604, Three Bristol Lane, Ellicottville, NY 14731

Phone #: 716-699-4650 E-Mail: jalianello@mdaengineers.com

PROPERTY OWNER INFORMATION (if different than Applicant)

Name: _____

Mailing Address: _____

Cell Phone Number: _____ E-Mail: _____

TYPE OF APPEAL:

Area Variance Use Variance Interpretation of Zoning Law text or map

Section of Zoning Law from which variance is requested: Section 3A

Describe the requested variance: rear, side & front setbacks, Floor area ratio (please see attached letter)

Is this appeal from a decision of the Town/Village of Ellicottville Building Official? YES NO

If yes, what as the type of decision or permit? _____

Date of decision: _____

A previous appeal has has not been made with respect to this decision or with respect to the property. If a previous appeal was made, provide the Appeal # _____ and Date of Appeal _____

Reasons Supporting Your Appeal

Please reply to the questions below for the type of appeal that you are making. These are the criteria that the Zoning Board of Appeals will use to evaluate your appeal. Provide as much detail as possible. Feel free to attach an additional statement.

AREA VARIANCE

In making its determination on an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance were granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making that determination, the ZBA will consider these five questions.

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance?
 Proposal will improve building & lot with proper elevation, land grading, drainage, and landscape improvements.
 Please see the letter provided with this application.

2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?
 No, we have explored other heating options and blocking vents, as well as other design changes, that just do not offer similar comfort level to existing forced air furnace. Please see the letter provided with this application.

3. Is the requested area variance substantial?
 The proposed changes will get this building to scale with neighborhood. Please see letter provided for additional information

4. Will the proposed variance have a adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
 Variance is requested to improve indoor air quality, site drainage, landscaping, elevation of building, scale of building, improved flushing, etc. Please see letter provided with this application.

5. Is the alleged difficulty self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.
 The difficulty is inherently an unsafe condition based on how this dwelling was designed prior to our purchase of property. Please see letter provided with this application.

USE VARIANCE

In order for the Zoning Board of Appeals to grant a use variance, the applicant shall show that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence; and
 n/a

2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood; and
 n/a

3. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 n/a

4. That the alleged hardship has not been self-created
n/a

Provide a statement that discusses each of these points, demonstrating that the zoning regulations have caused unnecessary hardship.

INTERPRETATION OF ZONING LAW

Provide a statement that describes what the Building Official determined, what you believe should be the interpretation, and why.

since we have submitted Zoning Permit and ZBA applications concurrently, we request the opportunity to respond to the Village concerns. Please see our attached letter regarding our initial assessment of our property's non-conformities.

Attach additional statement.

PROPERTY / FACILITY NAME

Property of Michelle and Craig Winters

Address: 9 Elk Street, Ellicottville, NY 14731

Property tax map #: 043601-055-035-0001-023-000-0000

Current use of property: residential

Description of Proposed Project/Use (attach additional pages, survey and plans):

Please see letter and plans provided with this application

Zoning Requirements from Town/Village Zoning Law.

Front yard setback: 25', Rear yard setback: 35', Side yard setback: 10',

Combined side: 30', Minimum lot size: as platted, Width: _____,

Height: 28' max, Floor area ratio: 0.2/lot (Village)

Usable Open space: At least 30%

Site Information

Size of site: 8,916 Sq. Ft. Size of area to be developed: 280 footprint Sq. Ft.

Main Structure:

Construction type: wood-framed addition Front yard setback: 14.8 feet

Height: 2 stories, 21.2 feet Side yard setback: 7.5 feet

of family units: 3 Total of both side yard setbacks: 23.4 feet

Size of lot: 8,916 Sq. Ft. Rear yard setback: 26.3 feet

Usable Open space: 79 % Floor area ratio: 0.35 (Village)

Corner or interior lot? interior Other: _____

Accessory Building:

Description: _____

Percentage of yard: _____ Height: _____ feet.

Setback from rear lot line: _____ feet. Setback from side lot line: _____ feet.

Floodplain:

FIRM Zone _____ BFE _____

Flood Plain Development Permit Required? YES NO

ATTACHMENTS

Attach all relevant items listed in the Town/Village of Ellicottville Zoning Law for type of application(s) being submitted. Additional copies of all plans, documents and other application materials may be required. See attached list of required forms and information needed for type of application being submitted. Deadline for submittal is three (3) weeks prior to regularly scheduled meeting date. Meeting dates are subject to change by the Board Chair.

SIGNATURES

Applicant and Owner (if different) must sign the application.

I hereby certify that I have examined this application and know the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The acceptance or approval of this application does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction, land use or the performance of construction. I have read and am familiar with the Town/Village of Ellicottville zoning law that is relevant to this application(s).

Additional Fees may be charged for: pre-application meetings, SEQOR review, and additional legal/consulting/engineering labor. Permit Fees are NON-REFUNDABLE

Permission to inspect – I hereby consent to Town/Village of Ellicottville Staff inspection of the project site and adjacent property areas. Town/Village staff may enter the property without notice. Inspection may occur without the owner, applicant or agent present, If the property is posted with “keep out” signs or fenced with an unlocked gate, staff may still enter the property. Agency staff may take measurements, analyze site physical characteristics, take soil and vegetation samples, sketch and photograph the site.

Applicant Signature: Michelle Winters Date: June 4, 2021

Applicant must be (check all that apply) Owner Operator Lessee

Applicant Name: ^{Print} Michelle Winters

Property Owner’s Signature (if different than applicant) _____ Date: _____

Property Owner’s Name: ^{Print} _____

<p><u>Office use only:</u></p> <p>Application Fee(s) _____</p> <p>Received by: _____ on _____ (Date)</p> <p>Project Number(s): _____</p>
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