

**VILLAGE OF ELLICOTTVILLE  
ZONING BOARD OF APPEALS  
MEETING MINUTES JUNE 7, 2022**

**PRESENT:** Fred Musolff            Chairman  
              Dan Mergenhagen    Member  
              Harry Weissman        Member  
              Donna Baldwin         Secretary

**ALSO PRESENT:** Greg Keyser-Village Planner, Kelly Fredrickson- CEO, Michelle Winters, Craig Winters-Applicants, Alexander Basinski-Attorney, Jacob Alianello-MDA Consulting Engineers, Greg Cappelli

Mr. Fred Musolff, Chairman called the meeting to order at 5:30 p.m. He presented the agenda.

Mr. Greg Keyser advised that the 2 variance applications before the Board require a determination of completeness before setting a public hearing.

Mr. Keyser presented VZBA-2022-071, 7-9 Elk Street an appeal requesting area variances from the dimensional regulations of the Village Zoning Code to complete alterations to a pre-existing non-conforming single-family detached dwelling. The project involves the existing structure to be raised and rotated, along with the construction of a basement and rear addition. The request involves a side setback variance, a rear setback variance and a front setback variance. The approximately 8,916 s.f. the lot is in the Village Residential District.

The zoning states that non-conforming uses are allowed to continue as before the zoning was adopted. The applicant is not proposing to change the current use, but intends to complete alterations to the existing single-family detached dwelling which extends its use on the current lot. Under Section 7.5 repairs, alterations and maintenance are allowed, provided they do not meet the definition of a substantial improvement to an extent exceeding in aggregate cost 50 percent of the market value of the structure. The definition of substantial improvement does not include activities to provide safe living conditions and the applicant has indicated that the proposed improvements address potential health concerns associated with drainage, mold, mildew and other potential code concerns. The applicant maintains that the detached structure is not an accessory unit but a principal structure.

Mr. Dan Mergenhange asked if not an accessory apartment should it be on its own lot? If it was a garage that was converted to any apartment it is an accessory use.

Mr. Alex Basinski, Attorney for the applicants referred to the Zoning Ordinance: An accessory building is defined as a building upon the same lot (or on a contiguous lot under the same ownership) as the principal building which is clearly incidental to and customarily found in connection with search principal building, or use and is operated and maintained for the benefit of convenience of the owers, occupants, employees, customers or visitor of the lot

with the principal use. Under this definition, the structure located at 9 Elk Street is not an accessory building. It is a separate and distinct dwelling utilized by the applicant as an apartment. It is not clearly incidental to the rented duplex located at 7 Elk Street. It is not operated and maintained for the benefit of convenience of the occupants or visitors of the duplex; in fact it is wholly unrelated to those occupants. 9 Elk Street should be classified as a single-family dwelling.

Mr. Greg Cappelli asked Mr. Keyser if he had discussed this situation with the Village Attorney?

Mr. Keyser said no.

Mr. Weissman noted that as assessor he changed the numbering giving the house #7 and the garage apartment #9 as is a non-conforming use created before the zoning was adopted. He has done this to other properties in the Village also.

Mr. Mergenhagen asked if it was ever 2 lots? Can you provide a title search?

Mr. Craig Winters said it is one lot and has always been one lot.

Ms. Michelle Winters said the garage was converted into an apartment in 1984.

Mr. Weissman advised that the lot number assigned indicates it was only one parcel.

Mr. Basinski said the history of the lot does not matter to the issue before the Board.

Mr. Keyser presented the variances requested: Minimum side yard setback (north side). Required 10', proposed 7.4' for a variance of 2.6'. Minimum Side yard setback (combined). Required 30', proposed 23.3' for a variance of 6.7'. Minimum rear yard setback. Required 35', proposed 20.4' for a variance of 14.6'. Minimum Front Yard setback. Required 25', proposed 14.8' for a variance of 1.2'.

1. Mr. Basinski advised that based on Section 7.5 the repairs to the structure include a 16 foot extension for a staircase to the upstairs, a basement for furnace and other utilities and rotating the building so it does not encroach on the neighboring property.

Mr. Keyser noted that the applicant should show how the changes address the code violations that exist and alleviate the issues. This information should be available for the public hearing.

Mr. Mergenhagen asked if the principal structure affects the setback requirements?

Mr. Fredrickson said yes. The combined side yard is measured from the principal structure to the property line and from the garage to the property line.

Mr. Basinski read from Section 7 of the Zoning Ordinance and stated that the structure at 9 Elk Street is exempt as it was converted from a garage to an apartment in 1984 prior to the adoption of the 1990 Zoning Ordinance.

Mr. Musolff stated that the Board will review the documentation and resolution of code issues provided by the applicant at the July 5, 2022 meeting. If the application is determined to be complete at that time a public hearing can be set for the August meeting.

Mr. Musolff presented VZBA-2022-74, 11 Madison Street, Elaine Northrup, area variance requests.

Mr. Keyser presented his staff report on this request for area variances from the dimensional regulations of the Village Zoning Code to complete alterations to construct a new 2,860 s.f. Single-family dwelling with an accessory apartment. The property encompasses approximately 7,817 s.f. and is located in the Village Residential District and Historic Design Overlay Zone.

The variances requested are: Minimum Side Yard setback (Combined): required 30' , proposed 22 ' for variance of 8'. Minimum Rear Yard Setbacks: Required 35', proposed 32.1' for a variance 1.9'. Minimum Front Yard Setback: Required 25', proposed 20' for a variance of 5'. The front of the house was moved forward to be in line with the neighboring houses on the street.

The granting of area variances for the proposed single family dwelling does not exceed any Type 1 thresholds and appears to meet the definition of a Type II action under Section 617.5(c)(17) of SEQR. The ZBA should classify the project as at Type II action before it acts on the application. Referral to the Cattaraugus County Planning Board is not required because the granting of area variances for residential structures is exempt from referral under Exhibit A, Item 1 of the Referral Exemptions Agreement between the County and Village.

Mr. Jacob Alianello, representing Elaine Northrup presented the proposed plans for a new single family residence with adequate dimensions to meet her physical needs as she ages and includes an accessory apartment to accommodate a live-in caretaker when the need arises. The site will be graded to drain to a dry well on the north side of the property with a rain garden on the southeast side. There are no stormwater drains on Madison Street. The proposed first floor has a kitchen/dining area, living area, office and master suite with bath and 2 car garage. The second floor has 3 bedrooms with a living area.

The proposal meets the zoning requirements for maximum height, lot coverage and minimum apartment size. Parking is proposed inside the attached two-car garage.

Mr. Keyser advised that the Board should determine if it needs more information or if this is a complete application. If a complete application a public hearing can be set for the July 5, 2022 meeting.

Mr. Mergenhagen said he feels it is a complete application.

**Moved by Mr. Mergenhagen that the ZBA determines that VZBA-2022-074, 11 Madison Street is a complete application and to set a public hearing for July 5, 2022 at 5:30 p.m. Seconded by Mr. Weissman. Ayes all. Carried.**

The Minutes of the September 8, 2021 meeting were read.

**Moved by Mr. Mergenhagen to approve the Minutes of September 8, 2021 as read. Seconded by Mr. Weissman. Ayes all. Carried.**

**Moved by Mr. Weissman to adjourn. Seconded by Mr. Mergenhagen. Ayes all. Carried.**

The meeting was adjourned at 7:00 p.m.