

**Minutes of the meeting of the Village of Williamsville Zoning Board of Appeals held on Wednesday, March 17, 2021, at 7:00 p.m. This meeting was held virtually due to the NYS Covid-19 lockdown regulations in place at the time.**

Present via Zoom: Richard Andrews, Chairman  
James Celeste, Member  
William Tuyn, Member  
Joseph Frese, Member  
Patricia Fulwiler, Member

Also present via Zoom: Deborah A. Habes, P/T Clerk  
Charles Grieco, Village Attorney  
Matthew Etu, Trustee Liaison to ZBA  
Tim Masters, Code Enforcement Officer

Absent: Timothy Boyle, Alternate member

Chairman Andrews led the meeting with the Pledge of Allegiance.

Mr. Andrews asked for a motion to approve the minutes of the ZBA meeting of January 20, 2021.

**ON MOTION** by Ms. Fulwiler, seconded by Mr. Frese, it was moved to approve the minutes of the January 20, 2021 meeting as submitted.

Unanimously carried.

**PUBLIC HEARING**  
**5601 Main St. (MU)**  
**The Irishman Pub and Eatery**  
**Log #2021-ZBA-02**  
**Request for relief from front and rear yard setback, building height, parking requirements and dumpster location for new outdoor seating project.**

Mr. Andrews opened the public hearing for 5601 Main St. at 7:01 p.m.

Mr. David Sutton, project architect, was present.

Mr. Andrews first read aloud a letter received from Dr. Zvi Sharf, co-owner of properties at 5604 Main, 5609-5611 Main, 5590 Main, and 78 E. Spring St., in opposition to the variance requests based on insufficient parking as proposed and odors from the Dumpster.

Mr. Andrews also indicated that he had received a personal phone call from the owner of nearby Ed Young's Hardware in opposition to the parking variance as requested.

Mr. Sutton waived the reading of the legal notice as it appeared in the March 10, 2021 Amherst Bee.

Mr. Sutton proceeded to give a brief summary of the proposal for an outdoor patio expansion, the proposed relocation of the Dumpster, and the number of parking spaces. The applicant wishes to provide more outdoor seating for dining purposes, citing the current pandemic as boosting the need to increase outdoor dining for restaurants for economic reasons. The applicant also wishes to take advantage of the beautiful view of the creek and Island Park at the rear of the property. They are proposing to move the existing Dumpster slightly forward toward Main St., while keeping it out of sight from pedestrians and restaurant patrons by enclosing it. It will be the best-looking Dumpster in the Village. The Planning Board has previously reviewed the plan and gave their suggestions for materials and design. As far as parking is concerned, this plan gives an alternative. In the summer people are outside and in winter people are inside. They are proposing to eliminate two parking spaces, which is insignificant in the wide scope of parking in the Main Street commercial corridor. The restaurant manager and staff encourage patrons to park in the nearby municipal parking lot, which offers ample parking at peak times of the day.

Mr. Sutton addressed the five criteria as follows:

1. No undesirable change will be made to the neighborhood. The project is an enhancement.
2. This is the only feasible option for the applicant to pursue in order to increase outdoor seating. If they could move the HDCP spot further away, they could gain a space but would still need a variance.
3. It will not be substantial because it is only two parking spaces. The benefits outweigh the negatives.
4. It won't have an adverse impact on the environment but will have a positive impact on the Main Street Entertainment District.
5. It is not a self-created hardship or difficulty. The existing tight conditions on the site have created the alleged hardship or difficulty.

Mr. Andrews had previously presented the comments opposing the variances at the beginning of this public hearing this evening.

Mr. Andrews asked Mr. Masters if the proposed increase in seating triggers the need for a parking variance. Mr. Masters responded that no, it was the proposed added square footage that triggered the need for a parking variance.

Mr. Andrews asked if the transparency issue needed a variance. Mr. Sutton responded that there is a series of faux windows along the north facing wall of the proposed brick enclosure. The Planning Board questioned the validity of an accessory structure and its need for transparent windows. Could need an interpretation instead of a variance. Mr. Masters believes the code is

unclear as to whether an accessory structure is required to provide for transparent windows or not.

Mr. Grieco opined that this is an accessory structure, but the Design Standards are not clear on transparency for an accessory structure. There is only one specific provision that refers to an accessory structure. The code only refers to “transparency” with respect to “buildings”. This issue is ambiguous in the code.

Mr. Tuyn stated he believes that it refers to buildings, not accessory structures. This proposal does not sit at the sidewalk. It does not bother him. It’s a fairly attractive structure for a Dumpster enclosure.

Mr. Grieco opined that he thinks it was not the intent of the code to have accessory structures at the street. We need to, in the future, clarify this issue in the code. Any ambiguities in the code must be decided in favor of the applicant. What is the “intent”?

Mr. Sutton added that they are providing window details, they are just not transparent. They will add window coverings to these “windows”.

Mr. Tuyn was not in favor of blacked out windows and thinks they will look phony. How well can this be achieved as a real window? It’s set back from the street, behind parked cars and is not directly sitting at the sidewalk.

There was discussion regarding the actual number of parking spaces needing a variance. Mr. Sutton suggested they are looking for a variance for five spaces.

Mr. Andrews inquired if there was a second means of egress from the patio and the entire rear area. Mr. Sutton stated there is already egress through the restaurant building and there is a 5’ setback along the east property line where a fence gate could be installed that would swing outward. If that happened, then the applicant would not use that alleyway for storage purposes.

Mr. Andrews asked for any comments from the audience.

Mr. Matthew Etu wished to speak as a resident, not in his capacity as a trustee. He finds this proposal challenging, since the ZBA has been granting variances for a long time for this business. Parking on this parcel has always been a challenge. This proposal would create a second permanent outdoor dining patio while granting a third variance for the seasonal dining space in the front parking lot. Is this proposal good for social distancing? It is hard to understand how it won’t increase the number of patrons. The Irishman is a very successful and popular business, and more people will patronize it with more outdoor seating added.

Speaking in favor of the variances:

Mr. Eugene O’Donovan, owner of the property and business – He is trying to achieve as much parking as possible. A reduction of two spots is not harmful to them, since there is so much parking in the nearby municipal lot. He is trying to be competitive with the nearby

establishments. The village is a walkable community. They want to offer their patrons a beautiful view of the creek. They also need storage space behind an enclosed structure.

Mr. Sutton wondered if the owner would consider eliminating the tables on the front parking lot. Might offer a concession?

Mr. Tuyn suggested that off-street needs to be off-street, just not necessarily on the same property, is that true? Mr. Grieco believes the applicant has to “control” the off-street parking according to the code. The code does not allow the applicant to rely on public parking. Could be reasonable if applicant has access to ample parking.

Mr. Andrews noted as an example that since tonight is St. Patrick’s Day the restaurants are very busy and the municipal lot is full.

Mr. Andrews asked for comments from the Board.

Mr. Tuyn – No questions.

Mr. Frese – Noted that the municipal lot could be sold at any moment. Raised the future prospect that what if Amherst Town Hall were to be relocated to another location and the property sold. That would affect the municipal lot’s status as a parking option. Does not agree that it can be relied on. Thinks this site is already overdeveloped. If patrons are seated, they need a place to park. He does not want this property to lose any parking spaces.

Ms. Fulwiler – No questions.

Mr. Celeste – No questions.

Mr. Sutton thanked the ZBA for their consideration. Mr. O’Donovan stated he wishes to be a successful and competitive business in the Village.

With no further comments, Mr. Andrews closed the public hearing at 8:10 p.m.

On the issue of the interpretation of “transparency” and whether or not it applies to an accessory structure, Mr. Grieco opined that the code is ambiguous in this regard and the topic should be added to the list of items that need to be clarified in our code.

**ON MOTION** by Mr. Tuyn, seconded by Mr. Celeste, it was moved to accept that the transparency requirement in the existing code **applies** to the proposed faux windows on the proposed brick Dumpster/storage/temporary restroom accessory structure.

Roll call:	Mr. Frese	Yes
	Mr. Tuyn	No
	Ms. Fulwiler	Yes
	Mr. Celeste	Yes

Mr. Andrews                      No

Motion carried. 3 – 2. Variance granted.

**ON MOTION** by Mr. Tuyn, seconded by Mr. Frese, it was moved to approve a variance from the existing transparency requirement in our code.

Roll call:	Mr. Frese	Yes
	Mr. Tuyn	Yes
	Ms. Fulwiler	No
	Mr. Celeste	Yes
	Mr. Andrews	No

Motion carried. 3 – 2. Variance granted.

**ON MOTION** by Mr. Tuyn, seconded by Ms. Fulwiler, it was moved to approve a variance for the applicant to have a reduction in parking from the required 12 spaces, to supplying only 4 spaces between March 15, and the last Sunday in November, to match the Outdoor Seating season in the Village of Williamsville Code. From the day after the last Sunday in November until March 14th the applicant is required to supply 8 parking spaces.

On the question:

Mr. Tuyn stated he was in favor of walking; Britesmith Brewery has only four parking spaces. The plastic surgeons allow multiple businesses to park in their lot across the street. He believes in “park once and walk” to visit multiple locations. He wants pedestrian action. He is all for promoting pedestrian action. Does not want to see reduced patio seating out in front of the Irishman.

Roll call:	Mr. Frese	No
	Mr. Tuyn	Yes
	Ms. Fulwiler	No
	Mr. Celeste	No
	Mr. Andrews	No

Motion failed. 4 – 1. Variance denied.

**ON MOTION** by Mr. Frese, seconded by Ms. Fulwiler, it was moved to **TABLE** the rest of the application.

Roll call:	Mr. Frese	Yes
	Mr. Tuyn	Yes
	Ms. Fulwiler	Yes

Mr. Celeste                      Yes  
Mr. Andrews                    Yes

Unanimously carried.

**PUBLIC HEARING**  
**5800 Main St. (MU)**  
**P. Emmett Hurley, MD, Oculofacial Plastic Surgery,**  
**Log #2021-ZBA-03**  
**Request for relief from the front yard setback of the building. Recladding of the building**  
**over 200 Sq. Ft. triggers a front yard setback of 0-10'. Building currently sits at an**  
**approximate setback of 50'.**

A representative from Stieglitz Snyder Architecture was present. Mrs. Hurley was also present.

The representative gave a brief history of the property and the proposal. They wish to update the building façade and are before the board to request a variance for the setback of the building. There will be no changes to the footprint of the building which sits 57' back. The current code's setback requirement is 10'. This is an existing building. In order to comply with the new code, the building would have to be picked up and moved toward the street. That is not possible.

With regard to the current parking lot and number of spaces, Mrs. Hurley added that her husband, Dr. Hurley, is the only oculofacial plastic surgeon in Erie or Niagara counties. He has 8 employees and plans to increase the number of employees soon. Many of his patients have vision problems. Ample and convenient parking is very important to them. Mr. Fletcher added that they are proposing no changes to the number of parking spaces.

The representative addressed the area variance criteria as follows:

1. There will no change to the character of the neighborhood.
2. It would be unfeasible to have to relocate the existing building further towards the street.
3. The renovation will be an improvement.
4. There will be no adverse effect on the environment.
5. It is not self-created since the building predates the new code.

Mr. Andrews asked if there was anyone who wished to speak in favor of or in opposition to the proposal. There was no one.

Mrs. Hurley added that Steve Goodwin, next door neighbor of Dr. Hurley, supports the variance.

Mr. Andrews closed the public hearing at 8:43 p.m.

Mr. Andrews referred to a letter from the Building Inspector, Mr. Masters, that indicated the proposal completely complies with the code except for the issue of the front yard setback.

Mr. Tuyn – Questioned the interpretation of the Building Inspector as it pertains to him considering it a two-story building.

Mr. Andrews – Asked Trustee Etu to reconsider the 200 square foot alteration trigger in the code since it is such an insignificant amount of square footage to trigger the need for a variance.

Trustee Etu – Stated that this is meant to improve the building. Site features are as much a part of the process as anything. It is irrational to think someone will pick up their building and move it to the street. We also want to improve our streetscape.

Mr. Masters stated there is only one variance before the board and that is for front yard setback.

Mr. Andrews stated that if there were no other comments or questions, that a motion be made.

**ON MOTION** by Mr. Frese, seconded by Mr. Celeste, it was moved to approve the variance for the front yard setback, as submitted.

Roll call:	Mr. Frese	Yes
	Mr. Celeste	Yes
	Ms. Fulwiler	Yes
	Mr. Tuyn	Yes
	Mr. Andrews	Yes

Unanimously carried. Variance granted.

Without further business, Mr. Andrews asked for a motion to adjourn.

**ON MOTION** by Mr. Frese, seconded by Ms. Fulwiler, it was moved to adjourn the meeting at 8:58 p.m.

Unanimously carried.

Submitted by: Deborah A. Habes,  
Clerk, P/T

**Next regularly scheduled ZBA meeting will be held April 21, 2021 at 7:00 p.m.**