

Minutes of the regular meeting of the Village of Williamsville Zoning Board of Appeals, held on September 15, 2021, in Williamsville Village Hall, 5565 Main Street, Williamsville, New York, and live via Zoom, at 7:00 p.m.

Present in Person: Richard Andrews, Chairman
James Celeste, Member
William Tuyn, Member
Patricia Fulwiler, Member
Joseph Frese, Member

Also present: Christine Petrie, Alternate Member
Deborah A. Habes, P/T Clerk (via Zoom)
Charles Grieco, Village Attorney
Matthew Etu, Trustee Liaison to ZBA

Excused: Tim Masters, Code Enforcement Officer

Chairman Andrews opened the meeting at 7:00 p.m. with the Pledge of Allegiance.

Mr. Andrews asked for a motion to approve the minutes of the ZBA meeting of June 16, 2021. (There were no ZBA meetings held in July or August.)

ON MOTION by Mr. Frese, seconded by Ms. Fulwiler, it was moved to approve the minutes of the June 16, 2021, meeting as submitted.

Motion carried. 5 – 0.

Mr. Andrews announced that because the first item on the agenda was for an interpretation of the a determination made by the Code Enforcement Officer, the Board would hear that item last.

PUBLIC HEARING

Log #2021-ZBA-11

15 Garden Parkway (NMU)

(3) Area Variances Requested:

- 1. Area variance from requirement for a building height requirement of 20 ft. when abutting a district boundary***
- 2. Area variance from requirement for transparency for first floor in the NMU District***
- 3. Area variance from requirement for side setbacks for an irregular lot***

Mr. Andrews opened the public hearing for 15 Garden Parkway at 7:02 p.m.

Mr. Andrews read the items in the file. The applicant's representative waived the reading of the legal notice as it appeared in the September 1, 2021, Amherst Bee.

David Sutton of Sutton Architecture was present to represent the application for his client, property owner Tom Young.

Mr. Sutton stated the applicant wishes to expand the building, keeping the same footprint. This property is a unique triangular parcel which is why area variances are required. This property needs attention. The first floor is used for commercial storage and will continue to be used in that capacity. The applicant is proposing to add a second story addition which will be comprised of two high-end apartments, one of which the applicant will occupy.

Mr. Sutton addressed the area variance criteria as follows:

1. There will be no undesirable effect on the neighborhood. The appearance of the building will be upgraded.
2. The building footprint will remain the same. It is not practical to have a two-story building with maximum height of only 20 feet.
3. It is not a substantial request because the building footprint will not be enlarged. The improvements to the property will enhance the property and the neighborhood.
4. There will be no adverse effect on the environment but will be a significant improvement to the property.
5. It is a self-created, however, this will be a great improvement to the appearance and use of the property.

Comments and questions from the ZBA:

Mr. Andrews – Asked what the front yard setback was. Mr. Sutton stated the Code Enforcement Officer determined that both sides of the building are considered primary facades because it is a corner lot.

Mr. Tuyn – Stated it is already a non-conforming structure. It is already 25' high.

Mr. Andrews asked if there were any persons in attendance who wished to speak either in favor or in opposition of the proposal.

1. Resident, 31 Garden Pkwy. – Next door neighbor. Expressed concern that the modified structure would overwhelm his own home since he lives adjacent to this parcel. Mr. Sutton replied that there will be no windows on his side of the structure.
2. Resident, 57 Garden Pkwy. – Concerned about increased traffic. Mr. Sutton replied that the plans still must go before the Planning and Architectural Review Board for review and approvals of all site plans and architectural details of the proposed project. The neighbors are invited to attend as it is an open meeting. They are not increasing the

parking or demand. There is plenty of parking for residential. There will be no parking in the open front triangle.

Mr. Celeste – Wanted to verify the first floor as commercial use and the second would be residential use. Mr. Sutton replied that that is correct. But a second apartment will be added to the existing apartment on the second floor and this added apartment will be occupied by the property owner, Tom Young.

Mr. Tuyn – Asked for verification that the first-floor storage space is used now and will continue to be used by Ed Youngs hardware, which Mr. Young is the owner of. Mr. Sutton verified that is correct. Mr. Tuyn further opined that there is no other two-story structure in the Village that measures only 20' in height.

Mr. Grieco – This is a very unusually sized parcel.

3. *Resident, 22 Garden Pkwy.* – Concerned about parking. Believes it to be a nice addition but believes the style does not blend in with the neighborhood. It is very modern-looking for her taste. Her own house is 20 feet high and is not concerned with the proposed 25' height. Mr. Sutton replied that the Planning Board will be reviewing the proposed style and all site plans at their October meeting and the public is welcome to attend.
4. *Resident, 31 Garden Pkwy.* – Concerned about how the demolition of this property will affect his own adjacent property. Mr. Sutton replied that there will be some demo on the subject property such as removal of the roof system. He would like to meet with the neighbors before the October Planning Board meeting to discuss the approach to demo and any other concerns.

With no further comments from the audience, Mr. Andrews closed this public hearing at 7:36 p.m.

PUBLIC HEARING

Log #2021-ZBA-09

153 and 161 Mill Street

Request for Interpretation of Decision by the CEO (Code Enforcement Officer)

Applicants: Amy and Craig Alexander, property owners of 153 Mill St.

Mr. Andrews opened the public hearing for 153 and 161 Mill Street at 7:37 p.m.

Mr. Andrews read aloud the items in the file. The applicants waived the reading of the legal notice as it appeared in the August 4, 2021, Amherst Bee.

Mr. Grieco stated that this is a request for an interpretation of a decision made by the CEO based on the prior code. We now have a new code.

Applicant Amy Alexander approached the ZBA to speak.

Ms. Alexander stated she is asking the ZBA for their reversal of a determination made by CEO Tim Masters about something her neighbor at 161 Mill St. erected on his property which abuts her property. Ms. Alexander considers it a fence and complained about it to the Code Enforcement Officer. Mr. Masters initially determined it to be a fence and sent her neighbor at 161 Mill St. a letter of violation as it had been built without a permit. The Village code requires fences to be approved and receive permits before they can be erected. Ms. Alexander stated the neighbor then turned this same structure into a “playground/playset” once he found out that a “playset” is not regulated by the Village code. It is 14’ high. Ms. Alexander claimed it is unsafe and will cause damage to her property. She believes it should be considered a “fence” as it is a “screening device” to her way of thinking. Ms. Alexander submitted a series of various photos to the ZBA and Mr. Andrews labeled them as “Exhibit A” for the record. Ms. Alexander stated it is common sense that this is a “fence”, a screening device, she opined, that her neighbor, Mr. Keaveny of 161 Mill St., meant to screen his view of her yard and the treehouse she and her family built on their own property in their backyard. She questioned the timing of the building of this fence.

Mr. Keaveny, 161 Mill St., then spoke (via Zoom).

Mr. Tuyn – Asked Mr. Keaveny who owns the fence.

Mr. Keaveny stated he owns the fence along the property line and the “playset” he built is braced against his fence. He opined that he believes that the Alexanders were aggressive in their building of a tree house on their property that directly overlooks his own back yard and pool thereby directly affecting his privacy and that of his family. He asserted that the Alexander’s treehouse has a window opening on the side of the treehouse that faces his backyard. He stated the treehouse is 15’ high and was built without a permit. He suggested that they built it because it was the determination of the CEO that the nature of a “playset” did not require a building permit since the code does not regulate playsets. As a result, since the code does not regulate playsets, he decided to build a “climbing wall/playset” himself on his own property and since it does not require a building permit and the code does not regulate playsets, he asserted he was not in violation, just the same as Ms. Alexander’s assertion that her treehouse does not need a permit, as determined by the CEO. He invited the ZBA members to come and inspect it for themselves. He further stated that Mr. Masters did research and found that rock climbing equipment, or playsets, were not regulated by code and did not require a permit.

Mr. Andrews – Noted from the photos that Mr. Keaveny has many tall arborvitae bushes planted along his side of the fence for apparent privacy reasons. Why didn’t he consider continuing the planting of a dense row of these evergreens down the length of his fence to screen his view of the Alexander’s treehouse. Mr. Keaveny replied that each of those arborvitae costs about \$600 and take a long time to grow to the height necessary to screen the view of the treehouse and provide privacy for his family.

Mr. Tuyn – Stated he believes it (this situation) is shameful on every level. He does not understand why anyone would put a treehouse in that very location. He understands the neighbor’s point of view. Thinks it is ridiculous.

Ms. Alexander – Stated that the tree in which she and her family built the treehouse is the only tree in her yard and her family wanted to build a true treehouse. There are other neighbors that overlook his yard from their properties. They built the platform for the tree house 8 months before and he didn't complain then.

Mr. Andrews – Asked Mr. Grieco if the ZBA had to base their interpretation on the code at the time of the building of the structure in question. Mr. Greico answered in the affirmative, since the structure was erected prior to the recent Code amendments making changes to the definitions of “structure” and “fence”, and the Code Enforcement Officer’s interpretation being appealed was based on the prior definitions. Mr. Grieco further explained that the determination Ms. Alexander is appealing is the Code Enforcement Officer’s determination that, under the then applicable Code provisions, the structure does not constitute a “fence” (but is rather a “playset” that was undefined under the prior Code) and thus not subject to the height restrictions regarding fences. The current definition does not control the instant appeal. Essentially, the current structure is a non-conforming structure, but it can only be protected as such if it was conforming at the time of its erection, which depends on the outcome of this appeal.

Mr. Tuyn – Opined that this is an issue of lack of respect on behalf of both parties. He is hopeful that there will be a peaceful resolution.

Mr. Keaveny – Stated he would remove his playset/climbing rock wall if Ms. Alexander removes her treehouse.

Mr. Andrews – Opined that Mr. Kaeveny built does not look safe and stable to him.

With no further comments, Mr. Andrews closed this public hearing at 8:13 p.m.

The ZBA proceeded to make their decisions on the two cases before them this evening.

Log #2021-ZBA-11 - 15 Garden Parkway (NMU)

- 1. Area variance from requirement for a building height requirement of 20 ft. when abutting a district boundary***
- 2. Area variance from requirement for transparency for first floor in the NMU District***
- 3. Area variance from side setbacks for an irregular lot***

ON MOTION by Mr. Frese, seconded by Ms. Fulwiler, based on the evidence submitted, it was moved to approve all three (3) area variances as submitted.

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

Motion carried unanimously. 5 – 0.

Log #2021-ZBA-09 - 153 and 161 Mill Street
Request for interpretation of CEO's determination

Mr. Andrews asked for clarification on what exactly they were ruling on this case. Mr. Masters' final determination was that Mr. Keaveny's structure constituted playground equipment, not a fence. The appeal is of CEO Masters' interpretation that this is a playset, not a fence, and therefore not subject to regulation as a fence.

Mr. Tuyn – Asked Mr. Keaveny what the “rocks” were made of on the climbing wall. Mr. Keaveny stated they were solid and invited Mr. Tuyn to stop by and climb the rock wall himself.

Mr. Andrews – Asked Mr. Keaveny if 2/3 of this was foliage. Mr. Keaveny stated it consisted of two panels of plastic foliage for decoration but does not know the dimensions of the plastic foliage.

Mr. Frese believes what Mr. Keaveny built is a fence.

Mr. Andrews asked for a motion to be made.

ON MOTION by Mr. Frese, seconded by Ms. Fulwiler, based on the evidence presented, it was moved to rule to **REVERSE** the 8/2/21 decision of CEO Masters who determined that what Mr. Keaveny has built is a “playground structure” and is not a “fence”. (The ZBA hereby determines that it is a “fence” since it is physically attached to a fence and its essential function is to act as an extension of that fence, and because it does not appear to satisfy the prior code's definition of “structure” (as opposed to a “fence” since it is not “safe and stable”).)

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

Motion carried. 4 – 1.

With no further business, Mr. Andrews asked for a motion to adjourn.

ON MOTION by Ms. Fulwiler, seconded by Mr. Frese, it was moved to adjourn the meeting at 8:27 p.m.

Motion carried unanimously. 5 – 0.

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

The next regularly scheduled ZBA meeting will be held on October 20, 2021, at 7:00 p.m.
Refer to the official Village website for further info. at www.walkablewilliamsville.com