

Minutes of the regular meeting of the Village of Williamsville Zoning Board of Appeals, held on November 17, 2021, in Williamsville Village Hall, 5565 Main Street, Williamsville, New York, and live via Zoom, at 7:00 p.m.

Present in Person: James Celeste, Member
William Tuyn, Member
Patricia Fulwiler, Member
Joseph Frese, Member
Christine Petrie, Alternate Member

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

Excused: Richard Andrews, Chairman

In Chairman Andrews' absence, William Tuyn opened the regular meeting at 7:00 p.m. with the Pledge of Allegiance.

PUBLIC HEARING

Log #2021-ZBA-12

255 Evans St., Drexel Hill Apartments (NMU)

Area Variance Requested:

***Area variance from Section 112-17D(2)(a),
"existing parking lots in front of a building may not be expanded"***

Mr. Tuyn opened the first public hearing at 7:03 p.m. for 255 Evans St.

Attorney Ari Goldberg of Barclay Damon LLP was present to represent the application for his client, Drexel Hill Apartments LLC, record property owner.

Mr. Goldberg gave a brief background on the recent activity of proceedings regarding the proposed project. His clients are rehabbing the existing buildings and wish to build more units. To accommodate the increase in building units and therefore tenants, the applicants wish to extend their non-conforming parking to accommodate parking requirements for new building construction on site. Mr. Goldberg stated he did not expect any decision this evening, as the project must still go before the Planning Board in December for SEQR review.

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

Mr. Dan Rider, 38 Garden Pkwy. – Opposed. He is a member of the Traffic & Safety Committee and recently recommended in his review of this project that there be no left turns allowed coming onto Evans St. The developer did not like the idea. Nobody else has a plan to improve traffic on

Evans. Thinks letting traffic go south on Evans would be a disaster. They want to make a non-conforming situation more non-conforming. Evans/Eagle intersection is already a disastrous intersection.

Mr. Goldberg – Will be submitting a full-impact traffic study to Planning Board.

ON MOTION by Mr. Frese, seconded by Ms. Fulwiler, it was moved to close this public hearing at 7:10 p.m.

Motion carried. 5 – 0.

PUBLIC HEARING

Log #2021-ZBA-13

46 N. Long St. (R-3)

Code determination

Applicant requests the ZBA make a ruling on the determination of the Code Enforcement Officer regarding fence height for a project in relation to a retaining wall.

Mr. Tuyn opened this public hearing at 7:03 p.m.

The applicant, Jane Vohwinkel of 50 N. Long St., waived the reading of the public hearing notice as it appeared in the November 3, 2021, Amherst Bee.

Ms. Vohwinkel read a statement regarding her challenge to a determination made by the Code Enforcement Officer regarding a fence built by her neighbor at 46 N. Long St., a property which is directly to the south of her own property. She is challenging the height of the fence as allowed by the CEO. She stated that this neighbor excavated her rear yard and filled it in to level it off. They cut right to her property line. A cement wall was constructed which now lies about 2' above the roof of her shed. Her neighbor has paved over the entire area with a non-permeable surface. The grade runs 2' – 4' along the garage. The neighbor's proposed solid black vinyl fence will go on top of this concrete wall. By the time it hits her garage, the fence will be over 9' high on Ms. Vohwinkel's side. Ms. Vohwinkel stated this construction is way beyond anything. She maintains that her property will be compromised. After complaining to the CEO, she received notice that this situation is allowable by code. She is concerned about the excessive height of this new fence and its impact on her enjoyment of her property. She is also concerned about possible runoff that will occur due to the entirely paved surface of her neighbor's new project. Believes there should be a section of the code that addresses such a situation. The Village Code allows a maximum height of a rear yard fence to be 6'. This project has altered the natural slope of the rear yard. Leveling could have been better accomplished by tiers going down the slope of their backyard.

Ms. Vowinkel stated her issues with the height of this fence: It will block sunlight and airflow into her yard since the fence is a solid fence, and, since the fence is black, it will absorb the heat of the sun and cause higher than normal temperatures that will affect her garage and its contents

which include gasoline for her mower and other normal stored flammable products, thereby causing a fire hazard. No village homeowner should be disadvantaged by such construction.

Mr. Tuyn – Asked CEO Masters what it is that the the neighbor at 46 N. Long has built. Mr. Masters replied that it is a terraced pad for outdoor patio space.

Mr. Masters explained that along the west side of N. Long St., the terrain slopes down about 20' towards a small drainage ditch at the rear of these properties. Backyard coverage by paving is not covered by the code, only front yard coverage. All proper permits were pulled by the owner of 46 N. Long St. The fence code defines height of a fence as measured from grade of the lot. Code does not prohibit the leveling of a property. Nothing in the code says you cannot put a fence on top of a retaining wall. Ms. Vohwinkel's garage is lower than the elevation of the street. He makes his determinations from a submitted survey.

Mr. Frese – Is this in the floodplain? Mr. Masters replied no, there is a buffer. Mr. Frese then referred to a recent ZBA case for a higher than allowed fence and the ZBA denied it because it was too high. The question here is: what the grade of the property is and can a fence be built accordingly.

Mr. Celeste – Stated to Mr. Masters that this is not the first time that he has made such a determination, correct? Mr. Masters replied: Correct.

Mr. Frese – No further questions.

Ms. Fulwiler – No questions.

Mr. Celeste - The condition was the same as at 79 Oakgrove. Same determination was made by the CEO.

Mr. Tuyn – The intent of the code is that your grade is what it is. Huge changes in grade are not that common in the Village since we are relatively flat. Our code does not mention this type of situation. Not sure ZBA has any latitude on this. Any drainage issues will be addressed by the code.

Mr. Tuyn asked if anyone wished to make a motion.

Mr. Frese brought forth a motion saying he did not see any way the ZBA could override the decision of the CEO, but they could make a recommendation to the Village Board to examine this type of situation further.

On the question, Mr. Tuyn stated he was looking for compromise here between the neighbors. The owners of 46 N. Long St. could change the fence style to provide transparency to allow both light and air to flow through it, not block it. It has no transparency as it is proposed. Ms. Vohwinkel is entitled to light into her yard.

The motion failed as no one seconded it.

With no further questions,

ON MOTION by Mr. Frese, seconded by Ms. Fulwiler, it was moved to close this public hearing at 7:55 p.m.

Motion carried. 5 – 0.

PUBLIC HEARING

Log #2021-ZBA-14

95 Mill St. (R-3)

Area Variance requests and a request for a Special Use Permit

Applicant wishes to apply for a special use permit to allow for an accessory apartment that is freestanding and not attached to the primary dwelling, as well as area variances related to the structure

Mr. Tuyn opened this public hearing at 7:56 p.m.

Attorney Ari Goldberg of Barclay Damon LLP was present to represent the application for his clients, Javid and Rachel Rzayev, record owners of the property.

Mr. Goldberg gave some background information regarding the project. His clients received building permits from CEO Masters and commenced construction on a detached accessory use structure at the rear of the property at 95 Mill St. After construction started his clients received notice that they would need to apply for a special use permit since it was determined that the accessory structure and its proposed use were not allowable by code.

Mr. Goldberg proceeded to state that the project will not affect the neighborhood. It will be set way back in the rear yard away from the primary dwelling and will have generous landscaping for screening purposes. It will not disturb the neighbors and is not a rental. The individual who will be living in it is the elderly mother of the owner and the grandmother of the owner's children.

In addition to the special use permit, there are two area variances needed:

1. This is a structure which will be detached from the primary dwelling.
2. The square footage of the accessory apartment exceeds the maximum 500 sf allowable by code for an accessory apartment. It will measure 756 sf.

There will be no adverse effects on the neighborhood. Will be built on top of the existing remains of a foundation of a former shed.

It is not self-created. Permits were issued. Owners are limited to not adding onto the existing primary dwelling. It must be a separate structure.

Mr. Tuyn asked if there were any members of the audience who wished to speak *in favor* of the applications.

Tina Amyes, 46 N. Long St. – In favor. She is familiar with Heartland Homes, the builder of this project and has seen the structure which was built by Heartland Homes next door to 95 Mill St. and thinks it is an attractive home. Imagines that this will be just as attractive.

Mr. Goldberg shared drawings of the proposed structure with the members of the ZBA.

Mr. Masters added that the structure can be built as it is, but it is the proposed USE of the structure that is non-code compliant.

Mr. Tuyn asked if there were any members of the audience who wished to speak *in opposition* to the applications.

Marie Taylor, 80 Orchard St. – Opposed. Concerned that it is already built. She lives behind it and believes it affects her privacy. Too close to the property line. *[Mr. Masters interjected stating it is 2' from the property line which is allowable by code for a structure like this and of this size.]* She is concerned about the procedure. Would like it built further from the property line for her privacy. Opposed to the lack of notice to neighbors that the building would be so close to the property line. Shocked to see it almost finished already.

Mary Carr, 100 Orchard Pl. – Opposed. Trying to understand how it got approved to be built this summer and only recently did she and her neighbors get a notice. Thinks it was self-created situation. Now this house is on the property line of houses on Orchard. The elderly mother of the owner could live somewhere else. There are plenty of senior-living homes in our area. She does not have to live here. It will cause an adverse effect on the neighborhood. It is unprecedented for a house to be built in a backyard. She has lived here for 60 years. Asked the ZBA to deny the applications.

Ken Poczciwinski, 80 Orchard – Opposed. Agrees with the two previous speakers. The owners of 95 Mill St. built the house next door to them, to the south and it is right on top of her. They have no respect for their neighbors. Landscaping? People will still see the structure from the street. Their stated issue of them not wanting to build onto the existing house is not right. What will happen in the future when these owners sell the property? What will happen then? Bad precedence being set.

Lawrence Fradin, 84 Orchard – Opposed. There is a structure about 5 ft. from the house at 90 Orchard. Why is this one called an apartment? It's a house. What will happen in the future when these owners move? He wasn't notified of this building being built. Not happy.

Brandon Kapral, 81 Mill St. – Lives next to the new house these owners previously built on Mill St. They did not respect the trees as they removed them or the old stone wall that they removed.

He has only lived here for a short time and when he moved into his house there was a vacant lot next to him. Now there is a house there. Too close to his house. No privacy. It's a disruption to him and his family. This does not fit the Village.

Nelson Torre, 109 N. Ellicott St. – Shares the concerns of those in the audience who are in opposition. This will set a precedent. *[Mr. Celeste – The ZBA does not want to set more precedents. Applicants are here because they do not conform to the Village Code.]* This is not an accessory apartment. An apartment is attached to the primary dwelling. Does not meet the definition of an accessory apartment. This is new construction. These folks have a valid point. Cannot believe the CEO issued a permit. May be a problem in the future when a new owner buys the property. It is a substantial size. It is over 50% larger than allowable by code. It is not attached. Parking will be a problem. Off-street parking is not there. Shared photos with the ZBA: Exhibit #1 – Photo of backyard of the woman who lives behind. No room for landscaping there. Exhibit #2 – No ingress or egress for vehicles for this new structure. Exhibit #3 – Shows impact of rear neighbor. Too Close! Exhibit #4 – Taken from Orchard of new structure. Building is tight to rear neighbor's fence. This is a “backdoor” way of building a house in a backyard. It is a curable mistake. Would set a bad precedence.

Mary Lowther, 120 N. Ellicott St. – Opposed. Concerned that the building is too close to the lot line. There are 3 houses on the same lot. There are lots of drainage problems in the Village. Allowing a house to be an accessory apartment sets a bad precedence. Our Village is a desirable place to live and if we let people build multiple houses on a lot it is not good. How did this happen? Questions the procedure. How did it get built in the first place?

Mr. Goldberg – ZBA is not obligated to issue variances. No precedence will be set. It was a misunderstanding. A single accessory apartment is permitted. Only a family member is allowed to live in the space. No rent can be charged. This is a Type 2 action. Not subject to any SEQR review.

Village Attorney Grieco - Agreed with Mr. Goldberg that it does not require SEQR review. The owners of the property at 95 Mill St. subdivided the lot to create a separate buildable lot and proceeded to build a house known as 87 Mill St. The houses at 95 and 87 Mill St. share a driveway for off-street parking. The required minimum setback is 2' in a rear yard for an accessory structure. They are providing 5' setback. Five feet is plenty of room for landscaping. It is a common setback distance. That the elderly relative should live somewhere else is not relevant. We are here to correct an issue.

Ms. Petrie – The structure, if a garage, could be built in exactly the same spot where the structure is being built now. It is the USE that is in question here.

There were no other questions.

CEO Masters – Stated he made a mistake when he issued the permit. R-3 zoning allows multiple dwellings. He referenced the definition for an accessory dwelling and the code allows that. Airbandbs are allowed to be a separate structure. The applicants could technically cover up to

35% of their property with structures according to the code. They are well under that percentage of lot overage here.

Mr. Grieco – They are here for a special use permit.

Mr. Tuyn – One of the wonders of a village is that family members can live with the family.

Mr. Frese – There are time frames on a special use permit. Is there an inspection every two years of the property like in the Town of Amherst? How do we verify if it is this particular family member who is actually living there? In the Town of Amherst, the applicant must appear before the ZBA every two years to ask for renewal.

Mr. Grieco – The Village ZBA could make any conditions they want.

CEO Masters – This could be an Airbandb.

Mr. Goldberg – Would be amenable to a 2-year inspection process.

With no further comments, Mr. Tuyn asked for a motion to close the public hearing.

ON MOTION by Ms. Fulwiler, seconded by Mr. Frese, it was moved to close this public hearing at 8:55 p.m.

Motion carried. 5 – 0.

The ZBA ruled as follows:

255 Evans St., Drexel Hill Apartments

ON MOTION by Mr. Frese, seconded by Ms. Fulwiler, it was moved to TABLE this application.

Motion carried. 5 – 0.

46 N. Long St. – Challenge to the determination made by the CEO for the height of a fence

ON MOTION by Mr. Frese, seconded by Ms. Fulwiler, it was moved to uphold the determination of the CEO.

On the question:

Mr. Frese asked Trustee Etu to have the Village Board examine the code for its ambiguities regarding this issue.

Mr. Tuyn agreed with Mr. Frese. He hopes that the neighbors can come to a compromise with a change to an open look fence, not a solid panel fence. This is a unique situation. Believes that a railing would be required here but not a fence. Asked for some sympathy please between neighbors.

Mr. Frese – The fence looks institutional. He would prefer a lighter color also.

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

Motion carried. 5 – 0. CEO’s determination is upheld.

95 Mill St. – Application for a special use permit for an accessory apartment and 2 area variances:

(A) Special Use Permit Request

ON MOTION by Mr. Frese, seconded by Ms. Fulwiler, it was moved to **GRANT** the special use permit *with the following conditions:*

- 1. That the property shall be inspected by the CEO once every two-years to assure that the occupants are the same occupants as who were first applied for.***
- 2. This special use permit as granted here is subject to ZBA approval of the 2 subsequent area variances that remain before the ZBA this evening.***

On the question:

Mr. Goldberg asked if it must be for this specific family member.

Mr. Frese - Yes, and it’s for a two-year approval.

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

Motion carried. 5 – 0.

(B) Request for area variance for square footage of an accessory apartment exceeding that allowed by code.

ON MOTION by Ms. Fulwiler, seconded by Mr. Frese, it was moved to approve the area variance to allow a square footage of 756 sf. for the accessory apartment.

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

Motion carried. 5 – 0.

(C) Request for an area variance to allow a detached structure to be used as an accessory apartment as opposed to an accessory apartment that is attached to the primary dwelling.

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

Motion carried. 4 - 1.

In other business:

Mr. Masters distributed the ZBA meeting schedule for 2022 to the ZBA members. All members in attendance agreed with the proposed schedule as written.

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 regular meeting at 9:12 p.m.

Motion carried. 5 – 0.

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

The next regularly scheduled ZBA meeting will be held on January 19, 2022, at 7:00 p.m.
Refer to the official Village website for further info. at www.walkablewilliamsville.com