

**A Zoning Board of Appeals Meeting took place on Thursday, May 6, 2021 at 7:00 P.M. at Village Hall, 9 Fairlawn Drive, Washingtonville, New York.**

**PRESENT:**

**Chairperson Maureen DeVinko; Zoning Board of Appeals members Denni Lozza; James Kiernan; Steven Presser.**

**ALSO PRESENT:**

**Village Attorney Elizabeth Cassidy, Building Inspector and Code Enforcer John Terry.**

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

**Chairperson Maureen DeVinko led the Pledge of Allegiance to the Flag.**

**PUBLIC HEARING – REGARDING 61 EAST MAIN STREET:**

**Please note the Camera was not turned on until this point in discussion.**

**Zoning Board of Appeals Attorney Elizabeth Cassidy indicated the Public Hearing will be set for June 17, 2021 as for the interpretation only, and the Applicant will go back to the Planning Board with the appropriate plans.**

**Paul Kazdan of 35 East Main Street questioned if the location of the Moodna Creek has anything to do with the Zoning for this Property.**

**Chairperson Maureen DeVinko commented the question is a Planning Board question.**

**Sean Hegarty asked if the same people that want to build the apartments are the same people that own 61 East Main Street now?**

**Chairperson Maureen DeVinko added she believes they are.**

**Sean Hegarty questioned was this property possibly a group home that was not properly zoned, and Chairperson DeVinko added to her knowledge it was not a group home.**

**Mr. Hegarty responded he is talking about the Sheriffs Department having an investigation regarding this home.**

**Representative of 61 East Main Street, Ryan Gibson, added that was subject to litigation and it was resolved in litigation. The matter has nothing to do with this application but it was a matter that was resolved. Ryan Gibson added that he does not think he needs to make any other presentations for the Board at this point.**

**Chairperson Maureen DeVinko commented the Applicant for 61 East Main Street needs to return for the June 17, 2021 Zoning Board of Appeals Meeting.**

**1 NICOLL STREET – VARIANCES:**

**Chairperson Maureen DeVinko stated the next matter is regarding 1 Nicoll Street. Zoning Board of Appeals Attorney Elizabeth Cassidy indicated the Review 239 has come back from Orange County and it indicated that it was for Local Determination.**

**1 NICOLL STREET – VARIANCES - (CONTINUED):**

The Attorney representing 1 Nicoll Street commented that he drove by the property and the house and there is no way that the two (2) family dwelling in that house creates a detriment to the neighborhood or environment, and more importantly there is no evidence to suggest it does.

Chairperson DeVinko added she has been on the Zoning Board of Appeals for approximately eleven to twelve years now, and back in 2017, 176 East Main Street which is R100 as well was denied variances as a two (2) family home there because of lot lines not having proper distances. The Z.B.A. also denied another applicant and I apologize that I don't remember the address but it was across the street from "A-Plus", and we denied that request as well because it did not meet our Codes. This has been something the Z.B.A. has stood firm on. It would impact the neighborhood because we are setting precedent, and this Board has stood firm on keeping the R-100 the way it is and to my knowledge there are no other two-family homes in this proximity.

Zoning Board Attorney Elizabeth Cassidy indicated she did pull the property card from the Orange County Parcel Viewer. The New Assessment Role is designated as 215 which is one (1) family residential. I am assuming based on the County it was an assessor's determination.

Chairperson DeVinko mentioned the Zoning Board of Appeals has nothing to do with the Assessor.

Zoning Board member Denni Lozza indicated the requested variances are over fifty (50%) percent, and that would be setting a precedent. Zoning Board member Steven Presser agreed with this statement.

Z.B.A. member James Kiernan stated his concern is frontage setback which requires two-hundred twenty-five feet and granting a frontage variance would set a precedent which means other homeowners could possibly decide to do the same thing and divide their property and turn it into multiple homes.

Zoning Board Attorney Elizabeth Cassidy explained that the two (2) applications were dated June 5, 2020, and there was a second revised application December 20, 2020. The first determination was a Notice of Appeal on the April 7 Ruling that the property had been illegally changed. The Building Inspector has issued an Order of Remedy that the property had illegally changed from a single family dwelling into a two family. That application sought an interpretation that the use was preexisting nonconforming.

The applicant also asked for a Use Variance under the code. They then came back at some point in the Fall and found the Special Exception Use permit that allows RA Uses in the R100 zone and submitted an application to the Planning Board for the Special Exception Use, and in a letter dated December 2, 2020, the Building Inspector determined the bulk standards in the RA District as set forth in the 315-10 code applied, and the applicant has appealed in his determination there. The current request for relief is do the RA standards apply or do the R100 Standards apply. Based on whatever that answer is, then analyze whether the corresponding area variances are warranted. I have letters of March 2, and March 17, and then I set forth the procedural history. The Owner purchased the property at the foreclosure auction in July of 2019, and conveyed the property to the Applicant LLC in February of 2020. Based on the testimony it appears that the Applicant is the owner of the LLC. On April 7, the Building Inspector issued an order of remedy by a violation that the house was illegally changed to a two (2) family. On August 5, 2020 the Applicant applied to the Village Planning Board again for the Special Exception Use permit. It was referred to the Z.B.A., and the minimum lot area variance was from

**1 NICOLL STREET – VARIANCES (CONTINUED):**

40,000 square feet to 17,960 square feet frontage. The variance of 225 feet to 160 feet. Front Yard Setbacks Variances from 45 feet to 40.7 feet. One side yard setback variance from 40 feet to one side yard is 9.3 and the other is 23.8. Both side yard total setback variance from 100 feet to 33.1 feet. I will note there is a discrepancy. The building Inspector's determination reference 19,000 square feet can change. The survey references 17,960 square feet.

Zoning Board Attorney Elizabeth Cassidy indicated they are going to use the lower number to make sure that we incorporate everything that was on the survey. The Applicant appeared on January 20, 2021. The Village Attorney did submit a Memorandum clarifying the testimony of the Village Building Inspector dated January 26, 2021. That is incorporated into our record. There is no Certificate of Occupancy, that the property is a lawful two (2) family. There is no letter that the current use predates zoning. The Building Department file contains a permit for a mother-daughter unit and an affidavit signed by the prior owner entitled Karen Harlow. That affidavit indicated that they fully realize they have no right to have or maintain a two (2) family dwelling. That will be incorporated at length in any decision.

Ms. Cassidy stated my feeling is basically if it was a preexisting two family home and you purchased it as a two family home you would not be coming to any Boards with an application to make it a two family home. Attorney Benjamin Gailey indicated that is a separate appeal.

Chairperson DeVinko commented as far as your claim you could not receive Municipals it is because you did not have a Smoke Detector Affidavit. It is common knowledge that anyone can sign an Affidavit. It does not have to be done by an Attorney. Then you can receive Municipals. Chairperson DeVinko added she is not in favor of this request because it would be a detriment to the neighborhood and change the look of the entire neighborhood. This Board has stood firm for years on not setting precedents.

James Kiernan stated the property was bought at auction and that can be a problem because research may not have been conducted beforehand. There is no financial hardship if the variance is denied, and you will receive a return on investment.

Ms. Cassidy explained that there is a document specific to this property indicating it is a mother – daughter home, and Chairperson DeVinko stated when the property was sold the document specified it could not be advertised for rent or lease as a two family home.

**RESOLUTION – 1 NICOLL STREET – ONE (1) FAMILY DWELLING:**

Chairperson DeVinko made a motion, seconded by Zoning Board of Appeals member Deni Lozza and adopted to confirm that the property at 1 Nicoll Street was not a pre-existing two (2) family home; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

**RESOLUTION – 1 NICOLL STREET – USE VARIANCE NOT REQUIRED:**

Chairperson DeVinko made a motion, seconded by Zoning Board of Appeals member Steven Presser and adopted that the Use Variance is denied for the property of 1 Nicoll Street; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

**RA SETBACKS APPLY TO 1 NICOLL STREET:**

Zoning Board Attorney Elizabeth Cassidy stated Section 315-16 of the Zoning Code states that within any R-100 district the following Special Exception Usage shall be permitted (E) any use permitted in an RA District 315-11 states within the RA District, the following special exception usage shall be permitted. A Two (2) Family Dwelling provided that the lot upon which said dwelling is erected shall have a frontage of 225 feet; in such cases, the side yard requirements set forth in 315-10 shall be 2 times the minimum requirements. The Zoning Law refers by Section Number to the larger RA Setbacks which are in 315-10. In addition, examining the list of permitted and special exceptions uses in the RA District revealed that every use except the two (2) family has no dimensional standards next to them. Here, the RA lists two (2) family as 225-foot frontage plus specific reference to the RA Setbacks found in 315-10.

**RESOLUTION – 1 NICOLL STREET – DENY VARIANCES:**

Zoning Board Attorney Elizabeth Cassidy added that the Zoning Board of Appeals should take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making this determination the board shall also consider (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property will be created by granting of the area variances. (2) whether the benefits sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance. (3) whether the requested area variance is substantial. (4) whether the proposed variance will have an adverse effect on the physical or environmental conditions in the neighborhood or district. (5) whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals but not necessarily preclude the granting of the area variance.

The minimum lot is 40,000 required, provided would be 17,960, a difference of 22,040 square feet. Front yard setback is 45, provided is 40.7 feet. One side yard is 40 feet, the smallest side yard is 9.3 and the other side yard is 23.8. Code also has provision for totality of the side yard needs to be 100 feet and in this case it is 32.2 feet. Lastly, the frontage needs to be 225 and provided is 160.

Zoning Board of Appeals member Steven Presser made a motion, seconded by Zoning Board of Appeals Member Denni Lozza and adopted to deny the variances presented by the applicant of 1 Nicoll Street; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

**RESOLUTION – 1 NICOLL STREET – DENY FRONT YARD SETBACKS:**

Zoning Board of Appeals member Denni Lozza made a motion, seconded by Zoning Board of Appeals Member Steven Presser and adopted to deny the front yard setbacks presented by the applicant of 1 Nicoll Street; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

**RESOLUTION – 1 NICOLL STREET – DENY BOTH SIDE YARD SETBACKS:**

Zoning Board of Appeals member James Kiernan made a motion, seconded by Zoning Board of Appeals Member Steven Presser and adopted to deny both side yard

**RESOLUTION – 1 NICOLL STREET – DENY BOTH SIDE YARD SETBACKS –  
(CONTINUED):**

setbacks presented by the applicant of 1 Nicoll Street; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

**RESOLUTION – APPROVAL OF JANUARY 27 MINUTES:**

Zoning Board of Appeals member Denni Lozza made a motion, seconded by Zoning Board of Appeals Member Steven Presser and adopted to authorize the approval of the January 27 Zoning Board of Appeals Meeting Minutes; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

**ADJOURNMENT:**

Chairperson Maureen DeVinko made a motion, seconded by Zoning Board of Appeals member Denni Lozza and adopted to adjourn the May 6, 2021 Zoning Board of Appeals Meeting; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 4 Ayes, 0 Nays, 0 Abstentions.

**RESPECTFULLY SUBMITTED,**

**SOPHIA FOLEY**

**CLERICAL ASSISTANT**