

At a meeting of the Zoning Board of Appeals of the Village of East Aurora, New York, held at the Village Hall, East Aurora, New York on the 11th day of May 2023

PRESENT:

Jenny Schamberger- Chair
Alaina Smith
Tony Hoffman
Gary Kimmel-Hurt
Susan Russell

ABSENT:

ALSO PRESENT:

Rich Miga, Code Enforcement Officer
Christine Cappola, Sr. Account Clerk
Joe Trapp-Village Attorney
Grace Viger- Village Trustee
Michael Anderson-Abstract Architecture
Paige & Stuart Domanowski
Chris Contento- co-owner of building
Tim Magee- co-owner of building
Jeff Best- Architect
8 members of the public

Chair Jenny Schamberger opened the meeting at 6:01PM. Chair Schamberger requested a motion to approve the minutes from the April 13th meeting, Member Gary Kimmel-Hurt motioned to approve the minutes. Member Susan Russell seconded the motion with unanimous approval.

IN THE MATTER OF THE APPLICATION OF

Stuart Domanowski and Paige Huetter- 285 Prospect Ave

Village Code: § 285-20.4; Table 20.4E Residential District Lot and Yard Requirements.

Required: side yard setback for residential use of 10'. Requested: Side yard setback of additional 5' from east property line. Variance: 5'

And

Village Code: § 285-20.4; Table 20.4E Residential District Lot and Yard Requirements.

Required: side yard setback for residential use of 10'. Requested: Existing Side yard setback of 2.49' from west property line (included because addition extends non-conforming side yard setback from this side as well. Variance: 7.51'

Chair, Schamberger introduced the (4) members of the Zoning Board of Appeals which constitutes a quorum.

Chair, Jenny Schamberger opened the hearing at 6:03 pm

IT APPEARING that all parties entitled to notice pursuant to statute were given due and timely notice of the hearing in this matter as it appears from an affidavit of mailing filed herein and made a part of the record in this matter and that the required notice of hearing was published in the official newspaper of the Village of East Aurora on March April 20th, 2023 as it appears from the affidavit of publication filed herein and made a part of the record in this proceeding; and findings.

Chair, Jenny Schamberger requested Code Enforcement Officer Rich Miga, to read the denial letter sent to Stuart Domanowski and Paige Huetter:

1. The denial letter from the Code Enforcement Officer dated March 17, 2023, stating that relief is needed from the Village §285-20.4; Table 20.4E Residential district lot and yard requirements. Required: side yard setback for residential use of 10'. Requested: Side yard setback of additional 5' from east property line. Variance: 5'

And

Required: side yard setback for residential use of 10'. Requested: Existing Side yard setback of 2.49' from west property line (included because addition extends non-conforming side yard setback from this side as well. Variance: 7.51'

2. The letter of appeal from Stuart Domanowski and Paige Huetter was read aloud by Code Enforcement Officer Miga and made part of the record. IT APPEARING that this matter was not referred to the Erie County Division of Planning with Erie County giving no recommendation.
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IT APPEARING that this matter was not referred to the Erie County Division of Planning with Erie County giving no recommendation.

Chair, Schamberger asked if there were any other communications received on the matter and Code Enforcement Officer Miga responded no.

Chair, Schamberger then asked Stuart Domanowski and Paige Huetter to present their case to the Zoning Board of Appeals.

Paige shared with the board members that both owned houses prior to getting married and blending their families while ensuring they feel comfortable and safe. Stuart owned a 4 bedroom, 2 bath home and Paige owned a 4 bedroom, 1 bath home. Neither were big enough to house their large, blended family. Further the current real estate market isn't providing a big enough home for all of them in a reasonable price range for their income. They wanted to stay within the Village due to having school-aged children currently attending all three East Aurora Schools.

The west side of the house is already very close to the property line and fence in place. They would like to add a garage to the end of the house addition. They would remove the barn in the back. Member Gary Kimmel-Hurt asked for clarification of what is the current house and what is the addition is on the drawing. Gary also asked about the safety of the house and property if the barn was blocked by the addition. Paige shared that the barn would be removed. And Member Tony Hoffinan asked about an addition spanning north and south instead of east and west and

potentially using some of the driveway. Paige countered with the explanation that they need to be able to get to all of the kids quickly should a fire or emergency occur, which is why their architect laid the addition out as shown. It also maximizes their ability to use space as it is set out vs. a long house which would not allow for maximal space use.

Gary asked about the jut out on the house. Paige advised that part is already there, it is not part of the addition. Confirmed garage would be 1 and 1 half car size.

Jenny asked if there were drainage or snow melt issues on the property. Paige indicated that they have not had issues and the basement stays dry year-round.

Chair Schamberger opened the hearing for public comment. Neighbor and resident, Randy & Denise Reece at 289 Prospect spoke against the variance. They believed it would deter from the current Village appeal and negatively impact property values. Randy mentioned how approving this variance would set a dangerous precedent for future requests. He also pointed out that the addition inhibits clear space, reduction of his view, and a reduction of sunlight, causing a negative impact on his garden. He further mentioned privacy infringement as the addition would be of a height that would allow both he and the Dominowski's to see into one another's upstairs rooms. Lastly, he pointed out that their situation is self-created. Randy submitted his concerns in writing for the record.

Chair Schamberger called to close the public comments at 6:19pm. Member Tony Hoffman made a motion to close the public comments, Member Gary Kimmel-Hurt seconded the motion with unanimous approval.

The board heard from Paige again, in relation to clarifying the privacy and sunlight issues brought up by Randy Reece. She explained that it would be a bathroom window that the Reece's would have a view of, so it would not be something with a full view, like a bay window. There is also a 7-foot privacy between the property already. In regard to sunlight, there was a large maple that was removed that has opened up some additional sunlight as well.

The board continued to discuss options, looking for a creative way to make this work. Member Gary Kimmel-Hurt suggested turning the garage. Jenny asked if the garage could be reconfigured to a one car garage to eliminate some of the addition variance space. Stuart explained that the way it is set up works with the current driveway, if it were to be reconfigured, it could mean the driveway would not be wide enough. Paige explained that the driveway is already right next to the house, and any reconfiguration would have to include the driveway as it already is. Indicated the architect they had worked with, Heather Nemec had already considered these options. Discussion returned to turning the garage sideways, but Paige mentioned that the connection of the house wouldn't work- and again, then there would be a concern of safety for the younger children should a fire occur.

It was then realized by Member Kimmel-Hurt that the variance requested was larger than what was needed. This was due to the jut-out of the house already in place. This changed the amount of space needed and the variance request itself. Instead of a 7.51' variance on the west lot line, it was a 3.48' variance that was needed.

There being no further testimony, or questions from the members of the Zoning Board of Appeals, Chair Schamberger called to close the hearing at 6:32pm for deliberations and findings.

Chair, Schamberger called the hearing back into order at 6:57pm and offered to table to issue to allow more time to discuss changes with the architect. Otherwise, the board would go ahead and rule tonight. Paige indicated they were ready to go ahead with whatever the board ruled. Chair Schamberger read the following findings for 285 Prospect, the west lot line variance first:

1. 285 Prospect Ave is located in the SFR District.
2. The existing residence was built in approx. 1900.
3. The lot has a non-conforming width of 50 feet.
4. The new construction is a two-story residential addition approx. 38' x 24'.
5. The existing residence has a non-conforming side yard setback of 2.49' from the west lot line.
6. The new construction extends an existing non-conforming side yard setback.
7. The proposed addition requires a 3.48' variance from the west lot line.
8. An undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting of the area variance.
9. The benefits sought by the applicant cannot be achieved by some method feasible for the applicant to pursue, other than an area variance.
10. The proposed variance is substantial in relation to the requirement.
11. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
12. The alleged difficulty was self-created.
13. The proposed variance is the minimum variance deemed necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.
14. There were 87 notices sent out and 1 response against the variance was received.
15. This is a Type II action under SEQR.

Member Alaina made a motion to accept the proposed findings and to **GRANT** the West lot line variance for 285 Prospect. The motion was seconded by Member Gary Kimmel-Hurt and unanimously carried.

Chair Schamberger then read the following findings for 285 Prospect, the east lot line variance:

1. 285 Prospect Ave is located in the SFR District.
2. The existing residence was built in approx. 1900.
3. The lot has a non-conforming width of 50 feet.
4. The new construction is a two-story residential addition approx. 38' x 24'.
5. The proposed addition would be located 5 feet from the east property line and would require a 5' variance.
6. An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance.
7. The benefits sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.
8. The proposed variance is substantial in relation to the requirement.
9. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
10. The alleged difficulty was self-created.

11. The proposed variance is the minimum variance deemed necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.
12. There were 87 notices sent out and 1 response against the variance was received.
13. This is a Type II action under SEQR.

Member Tony Hoffinan made a motion to accept the proposed findings. The motion was seconded by Member Sue Russell, and unanimously carried. Member Tony Hoffman made a motion to **DENY** the East property line variance for 285 Prospect. The motion was seconded by member Alaina Smith and carried unanimously.

Chair, Jenny Schamberger called to close the hearing at 7:02 pm. Member Tony Hoffman made a motion to close the hearing, Member Gary Kimmel-Hurt seconded the motion with unanimous approval.

**IN THE MATTER OF THE APPLICATION OF
Abstract Architecture c/o St. Mathias Church- 374 Main Street
Village Code: § 285-30.3A(2) Fences. Required: Fences shall be permitted in all
districts, provided the height of a fence does not exceed four feet, where located to the side
or in front of the main building. Requested: 8' stone wall and fence in front yard of corner
lot. Variance: 4'**

Chair Schamberger introduced the (5) members of the Zoning Board of Appeals which constitutes a quorum.

Chair, Jenny Schamberger opened the hearing at 7:03 pm

IT APPEARING that all parties entitled to notice pursuant to statute were given due and timely notice of the hearing in this matter as it appears from an affidavit of mailing filed herein and made a part of the record in this matter and that the required notice of hearing was published in the official newspaper of the Village of East Aurora on April 20, 2023 as it appears from the affidavit of publication filed herein and made a part of the record in this proceeding; and findings.

Chair, Jenny Schamberger requested Code Enforcement Officer Rich Miga, to read the denial letter sent to Abstract Architecture c/o St. Mathias Church:

1. The denial letter from the Code Enforcement Officer dated February 21, 2023, stating that relief is needed from the Village §285-30.3A(2) Fences. Required: Fences shall be permitted in all districts, provided the height of a fence does not exceed four feet, where located to the side or in front of the main building. Requested: 6' in front yard of corner lot. Variance: 2'.
2. The letter of appeal from Abstract Architecture c/o St. Mathias Church was not read aloud, as it was already fully explained in the application.

IT APPEARING that this matter was not referred to the Erie County Division of Planning with Erie County giving no recommendation.

Chair, Schamberger asked if there were any other communications received on the matter and Code Enforcement Officer Miga responded no.

Chair, Schamberger then asked Michael Anderson to present their case to the Zoning Board of Appeals.

Mr. Anderson and the Rev Ann Tillman discussed how the materials to be used on the fencing are reflective of the current church design. Fence material factored into the decision for aesthetics. The Village Historical Commission provided approval of the design on Wed, May 10, 2023 as well. Further, the HVAC system is not a nice look for the Mid-Main District which prompted the necessity for the fence. HVAC system really could not have been placed elsewhere on the property due to building construction already in place.

Chair Schamberger opened the hearing for public comment. There being no public comment, Chair Schamberger called to close the public comments at 7:16pm. Member Tony Hoffman made a motion to close the public comments, Member Gary Kimmel-Hurt seconded the motion with unanimous approval.

There being no further testimony, or questions from the members of the Zoning Board of Appeals, Chair Schamberger called to close the hearing at 7:17pm for deliberations and findings.

Acting Chair, Schamberger called the hearing back into order at 7:21pm and read the following findings for 374 Main Street:

1. 374 Main St is located in the Neighborhood Commercial with Mid Main Overlay District.
2. The St. Matthias' Church was built in 1869 and is on a corner lot.
3. St. Matthias' Church has Local, State, and Federal Landmark Designations.
4. The Church recently upgraded their HVAC equipment, two separate units were placed along the Maple Road side of the building.
5. The Historic Preservation Commission approved the installation of the equipment but required screening and has approved the proposed design.
6. The proposed fence and stone column enclosures are 8' in height to screen the majority of the equipment from view and require a 4' variance.
7. An undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting of the area variance.
8. The benefits sought by the applicant cannot be achieved by some method feasible for the applicant to pursue, other than an area variance.
9. The proposed variance is substantial in relation to the requirement.
10. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
11. The alleged difficulty was not self-created.
12. The proposed variance is the minimum variance deemed necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.
13. There were 72 notices sent out and 0 responses.
14. This is a type II action under SEQR

Member Tony Hoffman made a motion to accept the proposed findings and to **GRANT** the variances for 374 Main St. The motion was seconded by Member Sue Russell and unanimously carried.

Chair, Jenny Schamberger called to close the hearing at 7:23pm. Member Alaina Smith made a motion to close the hearing, Member Sue Russell seconded the motion with unanimous approval.

**IN THE MATTER OF THE APPLICATION OF
425 Prospect LLC- 425-435 Prospect**

Village Code: § 285-20.3; Table 20.3 Residential District Uses Lists Note 1. Required: Conversion to a multi-family dwelling is permitted provided the number of dwelling units per multi-family dwelling does not exceed 4. Requested: 4 additional dwelling units on the third floor of an existing, non-conforming 8-unit building. Variance: 4 Units

And

Village Code: § 285-40.6; Table 40.6 Off-Street Parking Space Requirements. Required: Multi-Family dwellings require 1.5 spaces per dwelling unit (note the property has a separate 3-unit apartment building onsite) for a total of 15 dwelling units which require 23 spaces. Requested: 16 Spaces. Variance: 7 spaces

Chair, Schamberger introduced the (5) members of the Zoning Board of Appeals which constitutes a quorum.

Prior to the hearing the beginning, the board entered an executive session to discuss confidential information provided by the owners. Chair, Jenny Schamberger called to board to executive session at 7:25pm. Member Susan Russell made a motion to enter executive session, Member Tony Hoffman seconded the motion with unanimous approval.

Executive session was closed at 7:52pm and the hearing was opened by Chair Schamberger at 7:54pm.

IT APPEARING that all parties entitled to notice pursuant to statute were given due and timely notice of the hearing in this matter as it appears from an affidavit of mailing filed herein and made a part of the record in this matter and that the required notice of hearing was published in the official newspaper of the Village of East Aurora on March April 20th, 2023 as it appears from the affidavit of publication filed herein and made a part of the record in this proceeding; and findings.

Chair, Jenny Schamberger requested Code Enforcement Officer Rich Miga, to read the denial letter sent to 425 Prospect LLC:

1. The denial letter from the Code Enforcement Officer dated March 16, 2023, stating that relief is needed from the Village Code: § 285-20.3; Table 20.3 Residential District Uses Lists Note 1. Required: Conversion to a multi-family dwelling is permitted provided the number of dwelling units per multi-family dwelling does not exceed 4. Requested: 4 additional dwelling units on the third floor of an existing, non-conforming 8-unit building. Variance: 4 Units

And

Village Code: § 285-40.6; Table 40.6 Off-Street Parking Space Requirements. Required: Multi-Family dwellings require 1.5 spaces per dwelling unit (note the property has a separate 3-unit apartment building onsite) for a total of 15 dwelling units which require 23 spaces.

Requested: 16 Spaces. Variance: 7 spaces

2. The letter of appeal from 425 Prospect LLC was read aloud and made part of the record.

IT APPEARING that this matter was not referred to the Erie County Division of Planning with Erie County giving no recommendation.

Chair, Schamberger asked if there were any other communications received on the matter and Code Enforcement Officer Miga responded no.

Chair, Schamberger then asked 425 Prospect LLC to present their case to the Zoning Board of Appeals.

Chris Contento, co-owner advised that further information as to parking changes and additions as well as Fire and water access have been discussed in depth with the East Aurora Fire Department. Once the owners and the Fire Department understood each other's position, and the EAFD understood their intention to implement fire retardant building supplies as well as sprinkler systems and additional egress, the EAFD was much more amicable to the variance.

Member Tony Hoffman stated that it still did not explain the issue of self-created difficulty by the owner. He asked them to explain their reasoning as to why the issue of fire safety and the underlying costs associated with the addition were not self-created.

Mr. Contento explained how the issue was one that was already there prior to purchase and while they were responsible for knowing the issues at the time of purchase, the original use of the building was the same as what they intended it to be. And so they believe the issue was one that was already in place and not one they personally created for themselves. The third floor used to be a housing unit, sort of a dormitory with approximately 15 single rooms and a shared kitchen.

Chair Schamberger explained to the applicants that the board is required to be able to check off two boxes for a use permit. It is different from an area variance and there are much more strict restraints for the board to have to validate.

Architect advised that they purchased an existing structure, with no additional square footage being added. And the third floor was previously inhabited, so they believed that they could reform this floor. Ultimately, they would like to make a nice living space that is safer and greener. They have uncovered additional issues after purchase that also require safety upgrades.

At 8:01pm, Attorney Joe Trapp pulled the board aside to discuss the legalities of what the self-creation issue can pose for the board. The discussion ended at 8:03pm and debate resumed over the language of the current code as well as the self-creation issue. Member Tony Hoffman made a request for more details of the fire safety upgrades planned.

Mr. Magee discussed the use of fire barrier between the second and third floor as well as sprinkler systems and egress options for fire safety. All areas remodeled will use fire barriers and

fire-resistant materials. The intention is to install a sprinkler system into each unit in order to suppress any fires that may occur until the Fire Department can arrive. Argument can be made that the property will be safer than it ever was before.

Member Hoffman stated he believes, based upon their explanation, that the issues were not self-created, but rather they are alleviating previous self-created issues from former owners. In that case, it is not a concern.

Member Alaina Smith thanks the applicants for their hard work on the spreadsheets that were provided to the board, as evidence of financial viability.

Chair Schamberger opened the hearing for public comment at 8:11 pm. Harvey Szymanski of 123 Park Place spoke about his previous concerns with fire safety based upon the building style and was happy to hear they had met with the Fire department and were making fire safety upgrades. He stated he believed balconies should be allowed, because third floor residents deserve fresh air without having to travel to the first floor to get outdoors. He asked that the variances be approved so that Mr. Contento can continue with his work and get the building finished by fall.

There being no further public comment, Chair Schamberger called to close the public comments at 8:16 pm. Member Tony Hoffman made a motion to close the public comments, Member Alaina Smith seconded the motion with unanimous approval.

Chair Schamberger moved the proceeding to SEQR review, Part 2. As the Zoning Board is the only agency with any involvement in this action, so they are the de facto lead agency. As such they have to go through the Environmental assessment form.

Chair Schamberger went through the SEAF Part 2- Impact Assessment with members. All findings were no or a small impact may occur. This fulfilled the requirement of SEAF and did not require the Part 3 to be completed.

Member Tony Hoffman made a motion to accept the proposed SEAF findings and to adopt a **NEGATIVE DECLARATION for SEQR**. The motion was seconded by Member Alaina Smith and unanimously carried.

There being no further testimony, or questions from the members of the Zoning Board of Appeals, Chair Schamberger called to close the hearing at 8:26 for deliberations and findings.

Chair Schamberger called the hearing back into order at 8:37pm and read the following findings for 425-433 Prospect:

1. 425-433 Prospect Ave is located in the General Residential District.
2. The property is an existing non-conforming dwelling group consisting of an 8 dwelling unit building (425 Prospect) and a 3 dwelling unit building (433 Prospect).
3. The building at 425 Prospect was built in approx. 1899.
4. The third floor was originally used for shared residential/dormitory purposes but the conversion of the first two floors to apartments in the 1970s ceased the use of this floor.
5. The request is to add 4 additional dwelling units on the third floor for a total of 12 units. As part of the improvements to the overall building, that will address

underlying structural and safety issues discovered after purchase, including those raised by the Fire Department.

6.The use variance is required to add the additional dwelling units. The applicant cannot realize a reasonable return and that lack of return is substantial as demonstrated by competent financial evidence.

7.The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.

8.The requested use variance will not alter the essential character of the neighborhood.

9. The alleged difficulty has not been self-created.

10.Based upon the factors above, the applicable zoning regulations and restrictions have caused unnecessary hardship; applicant has proved for each and every permitted use under the zoning regulation for the district where the property is located the following conditions exist:

11.The proposed variance is the minimum variance deemed necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.

12.There were 81 notices sent out and 3 responses; 2 in favor and 1 with concerns.

13.This is an unlisted action under SEQR

14.The Zoning board has adopted a Negative Declaration.

Member Tony Hoffman made a motion to accept the proposed findings and to **GRANT** the variances for 425-433 Prospect. The motion was seconded by Member Alaina Smith and unanimously carried.

Chair, Jenny Schamberger called to close the hearing at 8:45pm. Member Tony Hoffman made a motion to close to hearing, Member Alaina Smith seconded the motion with unanimous approval.

Chair, Schamberger called to close this hearing of the Zoning Board of Appeals at 8:45pm. A motion was made by Member Tony Hoffman, seconded by Member Gary Kimmel-Hurt and unanimously carried. The Zoning Board of Appeals hearing for May 11th, 2023 meeting was closed.

Respectfully submitted,



Christine Cappola
Sr. Account Clerk