

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS
Thursday, JULY 7, 2022 at the Town Hall**

PRESENT: Cindy Dayton, Chairperson
Gail Scheeler, Member
Harry Weissman, Member

ALSO PRESENT: Greg Keyser-Town Planner, Kelly Fredrickson-CEO, Steven Chaffee-Applicant, Caleb Henning-MDA Consulting Engineers, Matt Zarbo-P.E., Mike Rotella-Applicant

Ms. Cindy Dayton, Chairperson called the meeting to order at 6:00 p.m. and presented the agenda. She opened the public hearing for **TZBA -2022- 60, Steven Chaffee, 6179 Route 219 South, Area Variance request for side yard setback.**

Mr. Chaffee presented his proposal to place an “Amish style” structure on skids on a concrete pad that remains from a former garage situated approximately 10 feet from the side property line of the lot. The 12 by 20 foot proposed structure would be unheated and would not have electricity. The neighboring most closely impacted property is currently used as housing for disabled adults. He spoke with the manager of the adult home and they have no issue with the proposed project and feel it will be an additional buffer between the property. There is a hedge along the property line. The principal structure at the front of the lot has 4 apartments which are rented. There is also a 2-car garage with a second floor apartment which is rented on Airbnb. The shed will be used for storage of excess furniture for the rental units which is currently stored in the garage.

Ms. Dayton noted that even on skids the shed needs to meet the setback requirement. She noted that the concrete pad is approximately 10 feet from the property line where a 15 foot side yard setback is required. The variance request is 5 feet.

Ms. Dayton asked for questions or comments from ei people attending. Nothing was submitted. -

Mr. Keyser said no written or verbal comments were received in response to the public hearing which was published in accordance with local law.

Moved by Mr. Weissman to close the public hearing for TZBA-2022-60, 6179 Route 219 South, area variance request for side yard setback. Seconded by Ms. Scheeler. Ayes all. Carried.

Ms. Dayton opened the regular meeting. The Minutes of the June 2, 2022 meeting were read. Ms. Dayton noted a correction to include Michelle Chaffee as present.

**Moved by Mr. Weissman to approve the Minutes of June 2, 2022 as corrected.
Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton presented TZBA-2022-60, Steven Chaffee, 6179 Route 219 South, area variance for discussion. She advised that in making its determination on an area variance, the Zoning Board of Appeals has to take into consideration the benefit to the applicant if the variance were granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community if granted. In making the determination the ZBA must consider five tests and grant the minimum variance necessary.

Ms. Dayton offered the five tests and the applicants analysis for the Board to consider:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance?

The applicant spoke with the manager of the adult home on the neighboring property who felt a shed will be an additional buffer between the properties.

2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance.

The most logical place for the storage shed would be on the existing pad at the rear of the property next to the garage.

3. Is the requested variance substantial?

The requested variance is approximately 5 feet (33%) to allow the side yard setback to be 10 feet where 15 feet is required in the zoning regulations.

4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The shed will provide an additional buffer on the property line with the adult home. There is also a hedge along the property line.

5. Is the difficulty self-created, which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance. ope

Yes, but the existing concrete pad is the best location for the shed.

Ms. Dayton asked if the Board is in agreement with the analysis of the five tests? Board members present said yes.

Ms. Dayton advised that the proposal to place a shed on the existing concrete pad does not require Cattaraugus County Planning Board review as it is exempt under the Exemptions Agreement between Cattaraugus County and the Town of Ellicottville. The proposal is a Type II Action under Section 617.5 of the SEQRA Regulations. The ZBA should classify the action as a Type II Action before acting on the variance request.

Moved by Mr. Weissman to classify the granting of an area variance as a Type II Action under Section 617.5 of the SEQRA Regulations. No further review under SEQRA is required. Seconded by Ms. Scheeler. Ayes all. Carried.

Moved by Mr. Weissman to grant the area variance to allow the side yard setback to be 10 feet where a 15 foot setback is required to place a shed on the existing concrete pad on the corner closed to the house and highway at 6179 Route 219 South as presented in application materials in TZBA-2022-60. Seconded by Ms. Scheeler. Ayes all. Carried.

Ms. Dayton presented TZBA-2022-65, 10 Easy Street, area variance request for the side yard and front yard setbacks to allow structural alterations to the existing residence. She noted that the Board reviewed the submittal at the June meeting and had questions about the parking area. The applicant was not present to answer questions.

Mr. Caleb Henning, representing John Wepler applicant, presented the site plan showing the existing structure and the proposed addition with renovation of the retaining walls, decks and patios. The plan is to improve the parking area and build a new retaining wall to maintain the integrity of the road. The existing deck will be demolished and replaced with a new wood deck further back from the right of way. The patios will be concrete. The addition to the house will provide a bedroom and bath. The owner wants to update and improve the property.

The proposed front yard setback will be 12.6 feet where 35 feet is required and the proposed side yard setback will be 17.7 feet where 15 feet is required. The structure will be 24.2 feet high where the standard is 35 feet to the midpoint of the roof.

Ms. Dayton noted the site plan showing 7 vehicles parked in the space. She asked what is the size of a typical parking space?

Mr. Fredrickson said usually 9 by 18 feet. Mr. Keyser said some are 10 by 20 feet.

Mr. Henning said the plan is to get the vehicles further off the road.

Ms. Dayton asked what is the material for the retaining wall?

Mr. Henning said the proposal is for ready rock laid 6 or 7 courses high with a parapet on top.

Ms. Dayton asked if any excavation is necessary?

Mr. Henning said maybe a small amount to dig deeper to lay the rock. Soil borings are being done.

Ms. Dayton asked will you be moving any vegetation?

Mr. Henning said one tree for sure and we are adding a grass swale for drainage.

Mr. Keyser advised that the HOA was contacted about the project and they felt the parking on the right of way is for public use and had no comment on the project.

Ms. Dayton asked if the Board felt it had enough information for a meaningful public review? She noted that the HOA and any neighbors within 100 feet of the project will receive a public hearing notice.

Moved by Ms. Scheeler to set a public hearing for TZBA-2022-65, 10 Easy Street, John Wepler, for requested area variances in order to renovate the existing house, decks, patios and retaining wall. Seconded by Mr. Weissman. Ayes all. Carried.

Ms. Dayton presented TZBA-2022-97 6064 NYS Route 242, an appeal to a zoning permit denial involving the intent to subdivide 57.8 acres of land for single-family residential development and create lots that do not meet the dimensional zoning requirements to provide sufficient area for building envelopes. The applicant is proposing to create 11 lots and is requesting 44 area variances from the minimum front, rear and side property line setbacks.

Matt Zarbo, representing Mike Rotella, applicant presented the proposal which is to subdivide a 57.8 acre parcel into 11 different lots. The frontage of the parcel (about 100 feet) is zoned Conservation District. The remainder of the parcel (which exceeds 50% of the parcel) is zoned Low Density Residential. We are requesting a variance to allow Low Density Residential District setbacks to be utilized in this subdivision. We can accept a rear yard setback of 100 feet if necessary, but would like to utilize a front yard setback of 50 feet and a side yard setback of 25 feet. The parcel is mostly zoned LD and per Town Code LD lots sizes are allowed. Utilizing LD setbacks would actually conserve more natural land by condensing how the back of the lot is developed.

Mr. Zarbo read from the Zoning Code: Article 3.1.C.1 Lot Size " The minimum lot size is five (5) acres, for a lot located entirely in the Conservation District. Where 50% or more of the lot is located in another zoning district (i.e. in cases where only the frontage of the lot is located in the Conservation District), the minimum lot size shall be the required minimum for the Zoning District in which the majority of the lot is located." He noted that only frontage is located in Conservation with over 50% located in LD, this means the Lot size of the LD District can be used which is two (2) acres.

Article 3.1..C.2 Lot Width" The minimum lot width is 100 feet. "Where less than half of the area of a lot is located on the Conservation District, the minimum lot width shall be the minimum for the Zoning District in which the majority of the lot is located." He noted that less than half of each lot is located in the Conservation District (over 50% located in LD). This means the Lot width of the LD District can be used.

Mr. Zarbo advised that the proposed Lot LD setbacks are Front yard 50 feet, Side yard 25 feet and Rear yard 25 feet. In initially preparing our Preliminary Plat, it was believed we were complying with all Town code requirements. However, Article 3.1.D Minimum Dimensional Requirements states "All buildings and structures shall be constructed a minimum of 100 feet from the front, rear and side property lines." and we were informed that the 100 foot from each property line setback would actually apply. This would mean that we could technically subdivide the parcel into 150 wide, 2 acre lots per Town Code, but then it would make all the lots completely unbuildable. We believe this makes the code somewhat contradictory to itself and believe the original intent of the code may have been to allow for LD setbacks in cases where only lot frontage was zoned CD and the majority of the lot is zoned LD.

Ms. Dayton referred to Section 1.7 of the code which sets forth the criteria for lots located in more than one zoning district and stipulates that if any portion of a lot is in a Conservation District, the regulations for the C District shall apply. She also noted that the Board needs to see the building envelope on each lot and each lot owner would have to come to the ZBA for a variance request. We don't have a preliminary plan to review. One of the lots has a preexisting non-conforming house on it.

Mr. Keyser said the applicant submitted a preliminary plat application for a subdivision. I advised that it would be denied as it does not meet the dimensional standards and would require variances. It was never submitted to the Planning Board. Usually a subdivision starts with a sketch plan. He noted that the minimums in the zoning code are a guideline and projects should be designed with the minimums in mind.

Ms. Dayton suggested the applicant consider lots that meet the requirements.

Mr. Zarbo said we could only get 5 or 6 lots.

Mr. Fredrickson stated that they could submit a plan for a Master Planned Development or a Clustered Development that meets the zoning and not require variances.

Ms. Dayton asked what is the amount of frontage:

Mr. Zarbo said about 2200 feet, but the lots are not all the same size. He asked why is the area zoned LD? If you wanted larger lots it should be zoned Agricultural-Residential.

Ms. Dayton advised that NYS Law outline the Zoning Board of Appeals authority. We can only allow variances where warranted. I am not sure I agree with your interpretation of the Zoning Code, and asking to grant variances on 58 acres of parcels without showing the lots on a site plan. She stated that she feels that we need a legal opinion from the Town Attorney since we disagree on the intruperation. We can only grant area variance or use variances. We have never had a request to allow the standards of one district in another district.

Mr. Zarbo asked have you ever granted a variance for a single family home in the Conservation District?

Ms. Dayton said not that she is aware of any and she has been on this Board a long time.

We allowed a variance for a small addition to single family home that was non-conforming as

it predated the zoning. We granted a variance for a solar array that extended into the 100 foot setback.

Mr. Zarbo stated that we need to know the intent of the code as it is written.

Ms. Dayton noted that we cannot re-classify the property. Any request for changes in districts would have to be presented to the Town Board.

Mr. Zarbo said perhaps we should meet with the Town Supervisor, Town Board and Town Attorney to clear up the contradiction in the code.

Ms. Dayton advised that usually a subdivision is submitted to the Planning Board first and if it does not meet the zoning code the applicant can apply to the ZBA for a variance. Since we do not agree on the interpretation of the code she asked for a motion to table.

Moved by Mr. Weissman to table TZBA-2022-97, 6064 NYS Route 242, area variance requests pending a consultation with the Town Attorney on a path forward and interpretation of the zoning code. Seconded by Ms. Scheeler. Ayes all. Carried.

Moved by Ms. Scheeler to adjourn. Seconded by Mr. Weissman. Ayes all.

The meeting was adjourned at 7:50 p.m.