

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS**
Thursday, August 4, 2022 at Town Hall

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

ALSO PRESENT: Gregory Keyser-Town Planner, Caleb Henning-MDA Consulting Engineers

Ms. Cindy Dayton, Chairperson called the meeting to order at 6:00 p.m. and opened the public hearing for **TZBA-2022-065, 10 Easy Street, John Wepler, Area Variance request.** The applicant is requesting an area variance to Section 3.4(D)(1) and Section 3.4(D)(3) to allow the construction of improvements to an existing residential structure less than the required minimum setbacks from the front and side yard property lines.

Mr. Caleb Henning, representing the applicants 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 as the owner wants to update and improve the property.

Ms. Dayton referred to the parking area and asked if the applicant will share parking with the neighbor?

Mr. Henning said no. They have their own retaining wall.

Ms. Dayton asked about the location of the new deck and staircase?

Mr. Henning said the deck is on the east side with the stairway leading down to the lower deck and parking area.

Ms. Dayton asked if the rear deck will be demolished?

Mr. Henning said the second story has a deck all the way around the house. The addition is only one story.

Ms. Dayton asked for questions or comments from the people attending. She noted that Board members did a site visit. Nothing was submitted.

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

Moved by Ms. McGoldrick to close the public hearing for TZBA-2022-065, 10 Easy Street, area variance requests. Seconded by Mr. Weissman. Ayes all. Carried.

Ms. Dayton opened the regular meeting.

The Minutes of the July 7, 2022 meeting were read.

Moved by Mr. Weissman to approve the Minutes of July 7, 2022 as read. Seconded by Ms. Scheeler. Ayes all. Carried.

Ms. Dayton presented TZBA-2022-065, 10 Easy Street, John Wepler. Request for an area variance to Section 3.4(D)(1) and Section 3.4(D)(3) to allow the construction of improvement to an existing residential structure less than the required minimum setbacks from front and side property lines.

The current use of the property is single-family residential and is permitted in the Medium Density District. Based on the information provided the variance requested are:

Minimum Front Yard Setback (measured from retaining wall)- required minimum 35 feet, proposed 3.8 feet for a variance of 31.2 feet.

Minimum Side Yard Setback (north side measured from retaining wall)- required minimum 15 feet, proposed 1.2 feet for a variance of 13.8 feet.

The granting of setback and lot line variances meets the definition of a Type 2 action under Section 617.5(c)(16) of SEQR regulations. The ZBA should classify the project as a Type 2 action prior to acting on the request.

A 239-m Referral to the Cattaraugus County Planning Board is not required because the property is not within 500-feet of a municipal boundary.

Ms. Dayton noted that area variances are requested by an individual wishing to use their property in a manner that does not comply with the dimensional or physical requirements of the zoning regulations. In making this determination the ZBA must consider the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance is granted. The ZBA must also grant the minimum relief necessary. She presented the 5 Criteria of the balancing test and analysis for the Board to consider:

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

Whether the dimensional alteration being proposed will result in a structure or configuration that will be seriously out of place in the neighborhood. The requested variance increases current setback distances and reduces the overall noncompliance of the lot as it relates to front and side yard setback requirements. The proposed improvements will remove an existing structure from the private right-of-way and appears to mitigate the potential for encroachment of parked vehicles by increasing the area needed for parking. Due to the topography of the area retaining walls and other similar features are common to accommodate development in steep slope areas. While the side setback requirement is

measured based on the proposed retaining wall, a portion of the proposal includes improvements that also extend into the side setback area.

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

The ZBA should consider alternatives open to the applicant that are lawful under the current zoning law. Due to the current configuration of the lot and existing development, area variances would likely be required under most scenarios.

A substantial portion of the proposed improvements occur within the building envelope of the lot. The footprint of the proposed building is approximately 3,000 square feet which is less than the area allowed for development within the building envelope of approximately 4,400 square feet. The requested variances increase current setback distances and reduce the overall non-compliance of the lot as it relates to front and side setback requirements.

3. Whether the requested area variance is substantial?

The ZBA should make a reasoned judgment as to whether nonconformity being proposed is too great, as compared to the lawful dimensions allowed by the current zoning law. Is a 31.2' (89%) variance from the front setback requirement too great considering the current setback is 0' and involves the removal of a structure situated within the private right-of-way? Is the 13.8' (92%) variance from the side setback requirement too great considering the current setback is less than a foot from the side property line?

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

The ZBA should weigh the proposal's potential impact on such factors as drainage, traffic circulation, dust, noise, odor, and impact on emergency services, among others. The proposed improvements will remove an existing structure from the private right-of-way and appears to mitigate the potential for encroachment of parked vehicles by increasing the area needed for parking. Will the requested variance result in a permanent increase in noise, odor and dust? The proposal meets open space requirements and drainage does not appear to discharge directly onto neighboring property.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of an area variance?

The Board members agreed that the 5 balancing tests are met.

Ms. Dayton asked if the Board members are ready to act on the application?

Moved by Mr. Weissman to classify the granting a setback or lot line variance as a

Type 2 Action under Section 617.5(c)(16) of the SEQRA Regulations. Seconded by Ms. McGoldrick. Ayes all. Carried.

Moved by Mr. Weissman to grant the following variances based on materials submitted in application TZBA-2022-065, from John Welpher at 10 Easy Street:

- 1. Minimum Front Yard Setback from 35 feet to 3.8 feet for a variance of 31.2 feet (89%).**
- 2. Minimum Side Yard Setback from 15 feet to 1.2 feet for a variance of 13.8 feet (92%).**

Seconded by Ms. McGoldrick. Ayes all. Carried.

Ms. Dayton presented TZBA-2022-097, Mike Rotella, 6084 NYS Route 242, an application involving the intent to subdivide 57.8 acres of land for single-family residential development and create 11 lots that do not meet the dimensional zoning requirements to provide sufficient area for building envelopes. The applicant is requesting variances to the minimum front, side and rear property line setbacks. The property is located in the Low-Density Residential District and the Conservation District and Significant Ridgeline Overlay District. The Zoning Code stipulates that if any portion of a lot is in a C District, the regulations for the C District shall apply. The applicant is asking to use the Low-Density minimum setback in the C District and also feels the code was contradictory to itself. The Board decided to get a legal opinion from the Town Attorney.

Ms. Dayton advised that she met with Mr. Keyser, Seth Pullen, Town Attorney on July 20, 2022 regarding questions about the legal requirements of the zoning code in connection with the subdivision of property in the Conservation District. In summary Mr. Pullen advised: The ZBA is permitted to grant area variances for parcels that already exist, but is not permitted to authorize creation of non-conforming parcels, especially if there are reasonable options available to the property owner that would not require a variance. Granting a variance to allow creation of multiple non-conforming lots would be essentially the same as making a change in the zoning designation of the subject parcel, which would constitute an impermissible act of “spot zoning” by the ZBA. The ZBA does not have authority to grant the requested variance of the minimum dimensional requirements for the proposed subdivision.

Ms. Dayton noted that the applicant has the potential to subdivide into smaller lots. Mr. Weissman stated they could propose a clustered or Master Planned Development where the Planning Board would address lot size as part of the review process.

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

The meeting was adjourned at 6:45 p.m.