

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS**

Thursday, October 6, 2022 at the Town Center at 6:00 p.m.

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

ALSO PRESENT: Gregory Keyser-Town Planner, Roger Spell- Applicant, Gordon Woodcock-Pivot Energy, Rob Panajui-Attorney

Ms. Cindy Dayton, Chairperson called the meeting to order at 6:00 p.m. and opened the public hearing for **TZBA-2022-145, 6847 Springs Road, Olive Ojala**, Area variance request for front and side yard setbacks to allow the construction of an accessory garage in the front yard.

Mr. Greg Keyser presented his staff report on this request for area variances from Section 3.4(D)(1) and Section 3.4(D)(2) to allow the construction of a 24 ' x 24' private detached garage less than the minimum setbacks for the front and side property lines. The property is approximately 28,200 square feet and is located in the Medium Density District.

Based on the information provided, the following area variances are requested: Front Yard Setback (front property line)-Required 35 feet, proposed 9 feet for a variance of 26 feet (74%). Side Yard Setback (west property line)- Required 25 feet, proposed 2.5 feet for a variance of 12.5 feet (83%).

Cattaraugus County Planning Board referral is not required because this project is exempt from review under Item 1 of the Referral Exemptions Agreement between the Town and Cattaraugus County.

This project does not exceed any Type 1 thresholds under 617.4 of SEQR and appears to meet the definition of a Type 2 action under 617.5(c)(12) and 617.5(c)(16) of SEQR. The ZBA should classify the project as a Type 2 action involving the construction of a minor accessory structure requiring area variances to the front and side yard setback requirements.

Ms. Dayton asked for questions or comments from the people attending.

Mr. Keyser noted 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. Scheeler to close the public hearing for TZBA-2022-145, 6847 Springs Road, Olive Ojala, Area variance requests. Seconded by Mr. Weissman. Ayes all. Carried.

Ms. Dayton presented TZBA-2022-145, 6847 Springs Road, Olive Ojala, Area variance requests for discussion.

Mr. Keyser advised that the ZBA must apply the balancing test and either approve, approve with conditions or disapprove the requested variances. He offered the following conditions for the Board to consider: 1. Natural vegetation to be maintained to provide a buffer and visual screening from adjacent properties.

2, Any steep slopes and grades along the road and adjacent property are not disturbed.

Moved by Mr. Weissman that the Zoning Board of Appeals classifies the project as a Type 2 action under Section 617.5(c)(12) and 617.5(c)(16) of the SEQR Regulations, involving the construction of a minor accessory structure requiring area variances to the front and side yard setback requirements. No further review under SEQR is required. Seconded by Ms. Scheeler. Ayes all. Carried.

Ms. Dayton noted that in making its decision 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. It must also grant the minimum variance necessary. She offered the 5 tests and staff observations for review:

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

The ZBA must consider whether the dimensional alterations being proposed will result in a structure or configuration that will be seriously out of place in the neighborhood.

- It appears there are other properties in the neighborhood with structures that do not meet the front and side yard setback requirements.
- The proposed garage appears to be appropriate in height and area for an accessory structure as compared to the current two-family structure and other property in the neighborhood.

Mr. Weissman noted that the garage would be next to the neighbors parking 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 reasonable alternatives that are lawful under the current zoning law.

- There appears to be limited siting options due to steep slope area and a sewer easement at the rear of the property.

3. Whether the requested area variance is substantial?

The ZBA should make a reasoned judgment as to whether the nonconformity being proposed is too great, as compared to the lawful dimensions allowed by the current zoning law.

- Are the variances too great considering the difficult topography and limited siting options?

Ms. Dayton noted that their side yard variance request at 83% is substantial, but the proposed site of the garage is where the applicant currently parks.

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, oror, aesthetic resources, and impact on emergency services, among others.

- Land disturbance is minimal, and the proposed garage will be sited on a relatively flat area of the property currently uses as part of a stone driveway.
- Will sufficient driveway space remain to accommodate parking for a two-family residence.
- How will the proposed garage affect snow removal and parking during the winter months?
- Will the height and/or location of the building affect scenic views currently enjoyed by the neighborhood or adjacent property.

Mr. Keyser stated that there appears to be room for snow storage.

Mr. Weissman noted that there is a vacant lot to the left with a drainage ditch for runoff. Snow could be pushed between the houses.

Ms. Dayton said that the houses across the road are at a higher elevation and scenic view should not be affected.

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?

Ms. Dayton said that the difficulty is self-created. The applicant has the option of not building a garage.

Ms. Dayton asked if the Board feels the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood? Do we want to consider conditions of approval?

Moved by Mr. Weissman that the Zoning Board of Appeals finds that the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community, based on its review of the five tests, and therefore grants a 26 foot variance to the front yard setback, and a 12.5 feet variance to the side yard setback to allow the construction of a garage at 6847 Springs Road as per materials submitted in TZBA-2022-145 from Olive Ojala with the following conditions:

- 1. Natural vegetation to be maintained to provide a buffer and visual screening from adjacent properties.**
- 2. Any steep slopes and grades along the road and adjacent properties are not disturbed.**

Seconded by Ms. Scheeler. Ayes all. Carried.

Ms. Dayton presented TZBA-2022-155, 6064 NYS Route 242- Use and Area Variances to construct a Tier 3 Community Solar Farm.

Mr. Gordon Woodcock of Pivot Energy presented the plans for a 2.5 MW Tier 3 Solar Energy System on 12 acres of a 195.4 acre parcel of land at 6064 NYS Route 242. The property is in the Agricultural-Residential and Conservation zoning districts. The contiguous land is connected across the buffalo & Pittsburgh Railroad and Great Valley Creek

The panels will have a single access tracker and follow the sun during the day. The poles will be driven into the ground. The site will be enclosed with a wire fence to keep in the sheep that will graze on the grass under the array.

Rob Panajui, Attorney, advised that a small part of the parcel is in the Conservation District, although the proposed facility is not in the Conservation District. Pursuant to Section 1.7 of the Town Zoning code, if any portion of a lot is in a C District, the regulations of the C District shall apply. In the C District, Tier 3 Solar Systems are not permitted and require a Use Variance. It also requires a Special Use Permit from the Town Planning Board. We looked at parcels that fit the project, landowners willing to participate and the ability to hook up to the power grid. We could subdivide and not need the Use Variance.

Mr. Woodcock advised that several options were considered, but we had to make sure we could connect to the public utility lines which can handle only so much current. We have to be close to the substation and appropriately sized to use the lines. Upgrades will be made.

Ms. Dayton asked how many houses would the array serve?

Mr. Woodcock said about 600.

Ms. Dayton noted that the map shows 252 acres.

Mr. Roger Spell said that the 195.4 acres are on one side of Quackenbush Road which will be the access road to the project.

Ms. Dayton noted that the project will be considered under the regulations for the Conservation District even with part of it in the Agricultural-Residential District. She asked if there are wetlands at the Quackenbush Road access?

Mr. Woodcock said yes and also a floodplain.

Ms. Dayton expressed concern about the traffic flow on Quackenbush Road.

Ms. Dayton noted that the Board needs to determine if the application is complete and can move forward in the process.

Mr. Keyser noted that the requested area variance and the required standards are outlined in his staff report. Variances are discretionary decisions by the ZBA, subject to review under SEQR. The project appears to meet the definition of a Type 1 action involving the physical alteration of more than 2.5 acres of land within a county certified agricultural district. As a Type 1 action, the ZBA must coordinate the environmental review with other involved agencies. The applicant has provided Part 1 of the Full Environmental Assessment Form. The ZBA should classify the Project as a Type 1 Action pursuant to Section 617.4(b)(6) and 617.4(b)(8) of SEQR; and declare its intent to be Lead Agency for a Type 1 Action Coordinated Review and direct the Planning Department to circulate a Notice of Intent to all Involved and Interested Agencies.

Referral to the Cattaraugus County Planning Board is required because the property is located within 500-feet of NYS Route 242 as well as a farm operation within Cattaraugus County Agricultural District 5.

Ms. Dayton stated that she would like the Town Planning Board to be the Lead Agency in the SEQR process as the project will go before them for a Special Use Permit.

Mr. Keyser said he can prepare a letter to the Planning Board requesting they be the Lead Agency.

Mr. Panajui asked will the Planning Board be the Lead Agency even if we do not have an application before them?

Mr. Keyser said he is not sure but will contact the consultant for advice on the procedure.

Moved by Mr. Weissman to classify the project as a Type 1 Action, pursuant to Section 617.4(b)(6) and 617.4(b)(8) of SEQR, to start the coordinated review and request that the Town Planning Board be Lead Agency. Seconded by Ms. Scheeler. Ayes all. Carried.

Mr. Weissman asked if Pivot Energy is leasing the 12 acres on the north side of Great Valley Creek on Quackenbush Road?

Mr. Woodcock said yes.

Ms. Dayton asked if there will be plantings on the 12 acres?

Mr. Spell said no. There will be grass under the arrays.

Ms. Dayton asked will you have to grade the ground to install the arrays?

Mr. Woodcock said there will be minimal disturbance and we will seed with natural grass after the project is completed. Many of New York State solar projects have sheep grazing on the sites.

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

The meeting was adjourned at 7:12 p.m.