

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS
Thursday, March 4, 2021 at 6:00 p.m.**

PRESENT: Cindy Dayton, Chairperson
Kathy McGoldrick, Member
Gail Sheeler, Member
Harry Weissman, Member
Darin Wiechman, Member

ALSO PRESENT: Gary Palumbo-Town Planner, Caleb Henning-MDA Consulting Engineers, Aaron Tiller-MDA Consulting Engineers, Josh Miller-Applicant, Nigel ?-Holihuts HOA member, Paul ? -Holihuts HOA member

Ms. Cindy Dayton, Chairperson called the meeting to order at 6:02 p.m. and opened the public hearing for **TZBA-2021-06, 19 Four Wheel Drive, Dominic Bagnoli, Area Variance request to Minimum Front and Side Yards.**

Mr. Palumbo presented his staff report on this appeal requesting two area variances to Section 3.4.D(1) (front yard setback) and to Section 3.4D(3) (side yard setback) in order to construct a residential garage at the single-family home at 19 Four Wheel Drive (south/uphill side). The lot is approximately 12,361 s.f.(excluding the right-of-way for Four Wheel Drive (a private road). The parcel is in the Medium Density Residential District.

The proposal is to construct a 1-story garage in front of the existing home. Approximately $\frac{1}{3}$ of the existing house and all of the proposed garage is within the front setback. One third of the garage is located within the Holihuts road right-of-way, but off the private road.

At the February meeting the ZBA asked the applicant to consider alternative designs to reduce impact and minimize the variance. A revised plan was received. Based on the revised plan dated 2-18-21 the variances required for the addition are:

1. Minimum Front Yard setback (north side) - Section 3.4.D(1): Required 35.0 feet, provided -10.5 feet for a variance of 45.5 feet (-130%)
2. Minimum Side Yard Setback (east side) - Section 3.4.D(3) garage plus stairs: Required 15.0 feet, provided 8.5 feet for a variance of 6.5 feet (43.3%))

Our typical dimensional assessment would describe the encroachment in negative terms or -45.5 feet, a variance that is approximately 130% off the standard 35-foot minimum front yard. Since the entire structure is in front of the front setback line (in the required front yard), it is difficult to measure the side yard.

Mr. Palumbo advised that one email from Melba LaMonica from the Holihuts HOA was received in response to the public hearing notice which was published in accordance with local law. He read the email for the record: During our HOA meeting to approve or

disapprove building this garage (Bagnoli) within the ROW it was denied. The main concerns of the majority who voted against it are the following:

It will create a legal nuisance for the HOA and put the HOA in harm's way.

It is precedent setting for the HOA (can't deny future requests to remain equitable to all HOA members).

Enforcement of removal of the garage is not feasible (the HOA could wind up paying to remove structures if a homeowner refuses to do so if required to repair or add a utility such as a water line.

The HOA legal liability even with an indemnification HOA not guaranteed all damages reimbursed plus the hassle and expense a lawsuit creates to the board members

Ms. Dayton asked if Ms. LaMonica signed the email as representing the HOA board?

Mr. Palumbo said yes.

Mr. Henning advised that following the February meeting, he went back to the drawing board to address the safety concerns with the location of the stairs. By moving the stairs to the rear of the garage they are no longer on the property line. After a conversation with Ed Youmans at Holimont we are not proposing plantings between the improvements and the ski slope. Mr. Youmans stated that they will deploy appropriate barriers for any hazards that they deem necessary. They go through regular safety and risk management training and that their informed preference is to minimize the amount of human installed barriers including extra bushes or trees.

To address Holihuts HOA concerns we shifted the garage two feet closer to the house and raised the floor of the garage by two feet. This requires a steeper driveway and a short timber retaining wall on the road side of the garage. We have increased the distance of the closest corner of the garage to the front property line to 9.5 feet.

We have also changed the stairs to be located entirely behind the garage and proposed concrete sidewalk with some steps on the side of the garage. This eliminates the elevated landing at the corner of the garage which could be a potential hazard to skiers. It also allows the closest corner of the stairs to be 8.5 feet off the property line instead of 0 feet. This allows Mr. Bagnoli to have a 2 car garage getting his vehicles off the road and does not hinder skier access to the slopes.

The location of gas and electric lines have been identified at the west side of the property. No lines cross Mr. Bagnoli's lot as this is the last lot on the road. There are no existing water lines.

With regard to Holihuts HOA concerns Mr. Bagnoli has agreed to take down the garage if needed in order to construct water lines. This is a dead end road which stops before it reaches the Bagnoli garage.

Mr. Palumbo asked Mr. Henning if there discussion with Holihuts HOA was prior to the email

received stating that the Board is not allowing the plan to move forward?

Mr. Henning said he is not aware of any conversations between Dominic Bagnoli and the HOA board. Mr. Bagnoli is asking for the grant of variances contingent upon approval from the HOA. He wants to keep the proposal as presented. We can move the garage one more foot closer to the house.

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

Nigel ?, Holihuts HOA member noted that the contour lines on the site plan do not show the drop off. Snow is sometimes piled 8 feet high at the end of the road. Has anyone contacted the snow plowing company? People may need to walk on Mr. Bagnoli's steps to get to the slope. Is this going to be a problem with the homeowner?

Mr. Palumbo advised that these issues are not ones addressed by the ZBA. We heard from the HOA but not from HoliMont. The ROW is under HOA authority and their responsibility. The Town did not reach out to the snow plowing company.

Paul ?, Holihuts HOA member, said he thought the HOA was still reviewing the proposal. He doesn't think the HOA has seen the revised plan.

Mr. Palumbo stated that because the garage is on the ROW, the HOA has control of the site. ZBA needs approval from both Holimont and the HOA to move forward.

Mr. Henning said he understands that the public hearing could be held open if changes to the plan are pending. We may move the garage one foot closer to the house and make it one foot smaller.

Mr. Palumbo advised that if you are asking that it be held open because you will be submitting other plans, the ZBA can leave it open.

Moved by Mr. Wiechman to stop taking public comments and leave the public hearing open for TZBA-2021-06, 19 Four Wheel Drive until April 1, 2021 because the applicant has indicated they will be submitting different plans. Seconded by Mr. Weissman. Ayes all. Carried.

The Minutes of the February 4, 2021 meeting were read.

Moved by Mr. Wiechman to approve the Minutes of February 4, 2021 as read. Seconded by Ms. McGoldrick. Ayes all. Carried.

Ms. Dayton presented TZBA-2021-06, 19 Four Wheel Drive, area variance requests for discussion. She asked for comments from the Board members.

Ms. Scheeler noted that with the dead end road and snow piles it would be a good idea to get two vehicles off the roadside.

Mr. Palumbo suggested the application be tabled to the April meeting pending receipt of revised plans.

Moved by Mr. Weissman to table TZBA-2021-06, 19 Four Wheel Drive, application for area variances until April 1, 2021. Seconded by Mr. Wiechman. Ayes all. Carried.

Mr. Palumbo advised that he will republish the public hearing notice for the April 1, 2021 meeting. We need new plans and an explanation of what has changed 10 days prior to April 1, 2021 for public review.

Ms. Dayton presented TZBA-2021-18, 7 Plum Creek, Josh Miller, area variance to Section 3.5D(2) Minimum side yard setback.

Mr. Palumbo presented his staff report on this appeal requesting an area variance to Section 3.5.D(2) (side yard setback) in order to construct a residential addition at the rear of the existing townhome. This is an end unit and according to the filed cover map, there are no special notes or building envelopes to indicate that the current zoning would not apply. The proposal is to construct a ground floor addition at the rear of the unit "under" the existing 'second story deck. The existing 17'7" wide deck is 17.2 feet deep from the house and the proposed addition will be larger. At 17'7" x 9', the addition is an expansion of a non-conforming structure and the zoning permit must be denied, which triggers the appeal to the ZBA.

Based on the information provided, the area variance requested is: Minimum Side Yard Setback (east side)- Section 3.5.D(2); Required 15.0 feet, provided 6.8 feet for a variance of 8.2 feet (54.7%).

Ms. Dayton asked the applicant to present his proposal.

Mr. Aaron Tiller, representing Josh Miller presented the plan to remove the existing 8 foot wide deck and build a bedroom addition on the first floor with a new deck above. The addition follows the line of the building and the existing corner of the unit is 6.8 feet from the setback. At this development this type of addition has been made to several of the units in both the Village and Town.

Mr. Palumbo asked does the Plum Creek HOA have to approve this project? If they do not approve and the Town does it cannot be built.

Mr. Miller said that he had a conversation with the HOA president who stated that the HOA is in support of the addition as long as it does not encroach on the sewer easement.

Mr. Palumbo noted the 24 foot sewer easement is at the rear of the property. Also you cannot build on the DOT easement.

Mr. Palumbo advised that it appears there is enough information to conduct a meaningful

public review and a public hearing can be set for the April meeting. The HOA will receive a public hearing notice.

Moved by Ms. McGoldrick to set a public hearing for TZBA-2021-18, 7 Plum Creek application for an area variance for April 1, 2021 at 6:00 p.m. Seconded by Mr. Wiechman. Ayes all. Carried.

Mr. Palumbo advised that the Village Board is requiring all Board members, Planning Board members and ZBA members to take ethics and conflict of interest training. Richard Stanton, Village Attorney will conduct the training via Zoom on April 6, 2021 at 4:30 p.m. This is not mandatory training for the Town Board members, but if you feel it would be beneficial it would give you an hour towards the NY State training requirement. He will provide all board members with the link to join the meeting.

Mr. Palumbo noted that he is updating the contact list. If you have any changes to your email or phone numbers let him know.

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

The meeting was adjourned at 7:15 p.m.