

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS
Thursday, April 1, 2021 at 6:00 p.m.**

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

ALSO PRESENT: Gary Palumbo-Town Planner, Kelly Fredrickson-CEO, Joshua Miller-Applicant, Aaron Tiller-MDA Consulting Engineers, Anne McDowel, Andrea Campbell-Plum Creek Village Association

Ms. Cindy Dayton, Chairperson called the meeting to order at 6:00 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**. She advised that the Board held the public hearing open from the March 4, 2021 meeting pending receipt of revised plans. The applicant has withdrawn the application. She asked for a motion to close the public hearing.

Moved by Mr. Weissman to close the public hearing for TZBA-2021-06, 19 Four Wheel Drive as the application has been withdrawn. Seconded by Ms. Scheeler. Ayes all. Carried.

Ms. Dayton opened the public hearing for **TZBA-2021-18, 7 Plum Creek, Joshua Miller, area variance request to minimum side yard per Section 3.5.D.(3)**.

Mr. Palumbo presented his staff report on this appeal requesting an area variance to side yard setback in order to construct a residential addition at the rear of the existing townhouse at 7 Plum Creek. 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. The existing second story deck will be removed and a new deck will be constructed. The proposed addition will be 17.7'x 9' and is an expansion of a non-conforming structure and the zoning permit was denied, which triggered the applicant's appeal to the ZBA.

Based on the information provided, the variance requested for the addition is to the Minimum side yard (east side) per Section 3.5.D.(3): Required 15.0 feet, provided 6.8 feet for a variance request of 8.2 feet (54.7%).

There can be no construction on or over the existing NYS Department of Transportation sewer easement.

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

Mr. Palumbo advised that the public hearing notice was published in accordance with local law and no written or verbal comments were received.

Mr. Fredrickson said he did not receive any comments.

Mr. Palumbo noted that a letter dated March 16, 2021 from Plum Creek Village Association approving the construction project to Unit 7 was provided by the applicant.

Ms. Andrea Campbell, representing Plum Creek Village Association, advised that they granted approval to build out the bottom level of the unit, not to exceed 9 feet from the base of the current southwest exterior wall. The new construction cannot come on or over any property lines including units 6 or 8. She noted that this proposal is similar to the build out in unit 11.

Ms. Dayton asked if there are any changes to the proposal since the Board review on March 4, 2021?

Mr. Joshua Miller said there are no changes. The build out is in keeping with the character of the existing buildings. Other units have made similar build outs. There is no construction on the NYS Department of Transportation sewer easement.

Ms. McGoldrick said she noticed a "For Sale" sign in the window of the unit which questions ownership.

Mr. Miller said he is in the process of purchasing the unit and will close in a few days. The current owner is named in the application materials.

Moved by Mr. Weissman to close the public hearing for TZBA-2021-18, 7 Plum Creek, Joshua Miller side yard variance application. Seconded by Ms. McGoldrick. Ayes all. Carried.

The Minutes of March 4, 2021 were read.

Moved by Ms. Scheeler to approve the Minutes of March 4, 2021 as read. Seconded by Mr. Weissman. Ayes all. Carried.

Ms. Dayton presented TZBA-2021-18, 7 Plum Creek side yard variance application for discussion.

Mr. Palumbo advised that a 239-m referral is not required to the Cattaraugus County Planning Board. Granting a setback and lot line variance is a Type II (exempted) SEQR action, pursuant to Section 617.5(c)(12) of NYS SEQR regulations. The ZBA should move to formally classify the action as a Type II action before taking action on the application.

Prior to granting an Area Variance, the ZBA must weigh the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance were to be granted. NYS Town law requires that the ZBA consider five criteria. NYS Town Law also requires the ZBA to grant the minimum relief necessary.

Mr. Palumbo offered the applicant's response and his analysis of the five tests.

1. Will the variance produce an undesirable change in the character of the neighborhood or a detriment to nearby property owners?

Applicant's answer: No, new bedroom extension will blend with the neighborhood. Numerous units at Plum Creek have done the same addition.

Staff interpretation: The criterion appears to be met. The variance does not create a change in the use of the property, nor a significant change in character of the town house development.

2. Can the applicant achieve similar results through another feasible method? Are there alternatives to the variance request

Applicant's answer: No, the unit is part of a townhouse development which has set the side yard distance at 0 and 6.8 feet.

Staff interpretation: It appears this criterion is met. Even though this is an end unit, where an addition to the side rather than the rear would still encroach in the required yard area.

3. How substantial is the requested variance?

Applicant's answer: Minor, less than the existing side yard building setback

Staff interpretation: To measure how substantial the variance is, the ZBA must look not only at the quantifiable effect, but also at the level of impact that may result from the variance, as well as how can the impact be minimized. The side yard variance will allow a 6.8 foot encroachment or 54.7% variance to the standard. Because the deck already exists, the marginal increase in footprint is nominal (approximately 1.8 foot increase over the existing deck) and is unlikely to create a significant impact to the neighboring units. It appears this criterion is met. The Plum Creek Village HOA has granted their approval.

4. Will granting a variance have an adverse impact on the physical or environmental conditions of the neighborhood or community?

Applicant's answer: No. it matches other structures in the area.

Staff interpretation: The existing townhouse is located in a built-out residential area. If the variance is granted, the construction is not anticipated to create any adverse physical or environmental impacts. It appears this criterion is met.

5. Is the difficulty sel-created?

Applicant's answer: No, the existing unit is part of a townhouse development. The setbacks for this unit were set at that approval.

Staff interpretation: Yes, the difficulty is self-created. The townhouse was part of a master planned development where building footprints were pre-approved. Expansion of the residential footprint is not necessary in order to use the property for its intended purpose. However, failing to meet this criterion alone is not a reason to deny.

Ms. Dayton asked if the Board members agreed with the analysis of the five tests?
All Board members agreed.

Mr. Palumbo noted that on balance the benefit to the applicant outweighs any detriment to the neighborhood and offered motions for the ZBA's consideration.

Moved by Mr. Weissman to determine that the variance requested is a Type II SEQR action, pursuant to Section 617.5(c)(12) of the SEQRA regulations. No further review under SEQR is required. Seconded by Ms. McGoldrick. Ayes all. Carried.

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 criteria, and therefore, grants an 8.2 foot (54.7%) variance to minimum 15-foot side yard setback to allow the proposed 1-story 9.0 foot x 17.7 foot addition to be constructed under the replacement deck, as presented in ZBA-2021-18 and shown on the application and site plan dated February 11, 2021. The variance is granted with one condition:

- 1. It is the responsibility of the owner to ensure that no construction activity shall take place on or over the existing storm sewer easement held by the NYS Department of Transportation.**

Seconded by Ms. Scheeler. Roll call vote: Ms. Scheeler-aye, Ms. McGoldrick-aye, Mr. Weissman-aye, Ms. Dayton-aye. Carried.

Mr. Palumbo advised that he will prepare a decision notice for the homeowner and Mr. Fredrickson. Issuance of a building permit is subject to review and approval and inspection by the Town Code Enforcement Officer.

Mr. Miller thanked the Board for their consideration and approval of the variance request.

Ms. Dayton noted that all business has been conducted and closed the Zoom meeting at 6:38 p.m.