

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS**

Thursday, June 3, 2021 at 6:00 p.m. at the Town Center

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

ALSO PRESENT: Gary Palumbo-Town Planner, Kelly Fredrickson-CEO, Patricia Bailey-Bailey & Harris Architects, Dan & Carolyn Balkin-Applicants.
Ollie Hazard-HoliHuts HOA

Ms. Cindy Dayton, Chairperson called the meeting to order a 6:00 p.m.
The Minutes of the April 1, 2021 meeting were read.

Moved by Mr. Weissman to approve the Minutes of April 1, 2021 as read. Seconded by Ms. Scheeler. Ayes all. Carried.

Ms. Dayton presented TZBA-2021-76, 12 Sno-Way, Area Variance requests for front yard setbacks.

Mr. Palumbo presented his staff report on this appeal requesting an area variance to Section 3.5.D(1) (front yard setback) in order to construct a residential addition on the side of the existing single-family home. The applicants have also submitted a zoning permit application and ZBA appeal to repair the foundation (or reconstruct the entire house).

The proposed 12'x14' (168 s.f.) addition is 2 stories and placed back approximately 14' 3" from the front of the house for a 22'11" front setback from the edge of the right-of-way. The existing 6 foot wide front deck will be removed which reduces the encroachment of the existing structure into the minimum front yard. The rear deck is proposed to be altered or reconstructed to meet the 15-foot side yard setback. The variance request is 12'1".

Regarding repairing the existing house. The applicant can repair their existing structure as long as there is no expansion into the required yard areas of either the lower or upper floors. If those repairs lead to reconstruction or substantial improvements more than 50% of the market value, then the dimensional standards must be met or (obtain a variance from the ZBA).

A 239-m referral is not required to the Cattaraugus County Planning Board. Granting setback and lot line variances is a Type II (exempted) SEQR action, pursuant to Section 617.5(c)(12) of NYS SEQR regulations. When the ZBA takes action on the application, it should move to formally classify the action as a Type II action.

If the ZBA feels the application is complete and that the information provided is sufficient to conduct a meaningful public review a public hearing can be set for the July 1, 2021 meeting.

Patricia Bailey, Architect presented the proposed addition to provide more square footage for the family and reconfigure the existing floor plan to provide more modern amenities than the original 1970 construction provided. The variance is being requested to build in the current front yard setback so that the addition can be contiguous to the existing house. The site is steeply sloping and views from the main floor are sharply reduced as you descend the hill so the site for the addition has been carefully selected to least disturb existing trees and natural vegetation and therein reduce the possibility of erosion and also provide the furthest possible setback from the ROW still contiguous to the main house.

The second phase of improvements is to repair the existing structure in its current location if that is deemed to be the most cost effective and expedient solution. A contractor has advised that the required repair of failed unreinforced foundation wall, improvements in drainage, basement slab construction, more insulation, energy efficiency upgrades and egress windows will be difficult and Mr. Balkin has decided the best option is to “rebuild”.

The new construction would be on the existing footprint. The front deck encroachment in the setback would be omitted or limited in size except as necessary to access entry to the home. The basement wall would be reconstructed as 1’ into the setback and 1 foot taller.

Ms. Dayton noted there are two applications before the Board. One for the area variance for the addition and one for the reconstruction of the house.

Mr. Palumbo advised that Section 10 addresses non-conforming uses. Section 9 outlines the duties and authority of the ZBA. Can the ZBA take action on the reconstruction? If so one public hearing can be held for both variance requests.

Ms. Dayton asked, are you proposing to enlarge the kitchen and bedroom and reconfigure the original structure?

Ms. Bailey said yes.

Ms. Dayton asked for any questions? Nothing was submitted. She asked for a motion to set a public hearing for the July meeting.

Moved by Mr. Weissman to set a public hearing for TZBA-2021-76, 12 Sno-Way area variance request for setback for addition for July 1, 2021 at 6:00 p.m. Seconded by Ms. Scheeler. Ayes all. Carried.

Ms. Dayton asked have you decided to rebuild the main structure?

Ms. Bailey said that demolishing the existing structure and rebuilding is recommended by the contractor.

Ms. Carolyn Balkin said there are gaps in the foundation so the house will have to be jacked up and a new foundation built.

Mr. Dan Balkin said that the supporting beam is in 3 sections which is a concern to the builder. The building is structurally unsafe. The house was vacant for 10 years with no heating. The fireplace bricks are falling down and the fire box is rusted. We had hoped to salvage it but it is not possible and we feel we have to demolish and rebuild.

Ms. Dayton asked will you take the foundation out?

Ms. Bailey said yes. The new house will be built in the same footprint which is the best location on the lot.

Mr. Balkin said that if we move the house down the hill to meet the setback requirement our porch will be too close to the neighbors property and 30 feet off the ground.

Ms. Dayton referred to sheet S1 showing the cars on the driveway and road with a stairway leading to the entrance. Will it be removed?

Ms. Bailey said no. It is needed to access the house.

Ms. Dayton asked Mr. Fredrickson if he considered decks when looking at foundations?

Mr. Fredrickson said it depends. Decks have foundations.

Ms. Bailey said the foundation will be in the original footprint.

Ms. Dayton asked do you have a drainage plan?

Ms. Bailey said yes.

Mr. Palumbo advised that Section 10's intent is to limit encroachment and rebuild in conformity with the zoning..

Ms. Dayton asked what if there was no house on the lot? How would we handle it?

Mr. Palumbo said the building permit would be denied because the proposal does not meet the setbacks and they have to meet the five tests to build a new house.

Mr. Fredrickson said if you look at the building envelope, this is the best location for the house.

Ms. Bailey noted that zoning codes in other municipalities have zoning that addresses the relevance of the location of neighboring properties. Setbacks will be uniform.

Mr. Palumbo advised that in 1990 when Ellicottville wrote their zoning they did not include relevance of neighboring properties. HoliHuts is in the High Density District.

Mr. Balkin said that because of the proximity to the neighbors and the trees the current building envelope is the best site for the house.

Ms. McGoldrick stated that this situation will continue to come up as changes to properties with houses constructed prior to the zoning come before the Board. We may need to make changes to the zoning.

Mr. Palumbo asked board members to consider Section 10.4C and 10.5 and determine if the ZBA has the authority to act on the reconstruction.

Mr. Weissman read Section 10.4C: a building or structure that is used for a conforming use but does not meet the dimensional requirements of this law may not be expanded, if by such expansion the setback or other dimensional requirements would become more non-conforming, unless an area variance for such expansion is granted by the Zoning Board of Appeals. He feels this applies to the application before the Board. Board members agreed.

Ms. Dayton asked why not treat this as a new house?

Mr. Weissman said they could get a demolition permit and rebuild.

This appears to be a vacant lot with an area variance for the front setback less than 35 feet.

We have granted variance for new builds.

Mr. Palumbo said if you agree that Section 10.4C applies you can set a public hearing for the reconstruction of the house.

Ms. Balkin said that we want to get started on the project. How long will the process take?

Ms. Dayton said that at the July 1, 2021 meeting the ZBA will address both issues. Following the close of the public hearing the Board has 62 days to act on the applications. If there are no issues the ZBA could make their decision on July 1, 2021. A building permit would be issued shortly after.

Mr. Palumbo advised that he would issue a Notice of Decision immediately but a building permit cannot be issued until the architect submits a full set of plans.

Ms. Balkin asked why wouldn't the application be approved at the public hearing? If people Gobject?

Ms. Dayton advised that the application has to meet the five tests and the public hearing gives people a chance to give input for consideration. This is NY State procedure.

Mr. Palumbo said a public hearing notice will be published and sent to adjoining property owners via HoliHuts HOA.

Moved by Mr. Weisman to amend the motion to set a public hearing for TZBA-2021-76, 12 Sno-Way for area variance requests for front yard setback for addition and reconstruction of existing house for July 1, 2021 at 6:00 p.m. Seconded by Ms. Scheeler. Ayes all. Carried.

Mr. Balkin noted that other people in our situation may not want to deal with the issues. What will happen in the future?

Mr. Palumbo advised that the ZBA has no authority over the zoning code. The Town Board writes the zoning law. Grandfathering does not exist in the zoning. It is not the responsibility of the ZBA to change the zoning.

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

The meeting was adjourned at 7:05 p.m.