

**TOWN OF ELLICOTTVILLE  
ZONING BOARD OF APPEALS**

**Thursday, November 2, 2023 at 6:00 p.m. at the Town Center**

**PRESENT:** Cindy Dayton, Chairperson  
Kathy McGoldrick, Member  
Gail Scheeler, Member  
Darin Wiechman, Member

**ALSO PRESENT:** Gregory Keyser-Town Planner, Kelly Fredrickson-CEO, William Gilbert-Applicant, Eric Mucha-Applicant, Frank Knab-Applicant

Ms. Cindy Dayton, Chairperson, called the meeting to order at 6:00 p.m. and opened the public hearing for **TZP-2023-304, 6690 Poverty Hill Road, William Gilbert, Area Variance** request from Section 3.3.D.1 of the Zoning Code to allow the construction of a 24' x 24' (576 square foot) pole barn approximately 29 feet from the front property line. The front yard setback in the Low-Density Residential District is 50 feet and the appeal is for a 21 foot variance from the setback requirement.

The Zoning Board of Appeals received the application on October 5, 2023, A public hearing was set for November 2, 2023 and the notice was published in accordance with local law. Mr. Keyser advised that no written or verbal comments were received in response to the public hearing notice.

Ms. Dayton asked William Gilbert, the applicant, to present his project. Mr. Gilbert advised that he plans to construct a pole barn for vehicle storage at the front of the property where he currently parks the vehicles. The building will have a dirt floor. He cannot put the barn on either side of the house as the septic system is on one side and the well on the other. A creek and wooded area at the rear of the house prevents locating the barn there. If he puts the barn in front of the house he will still need a variance.

**Moved by Mr. Wiechman to close the public hearing for TZP-2023-304, 6690 Poverty Hill Road, William Gilbert, Area Variance request from Section 3.3.D.1 front yard setback. Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton opened the public hearing for **TZP-2023-307, Irish Hill Road, Eric Mucha, Area Variance** request from Section 5.6.C.1 of the Zoning Code to allow the construction of a 10-foot wide driveway approximately 5 feet from adjacent parcels. The setback requirement from the property line for driveways is 10 feet and the appeal is for two 5-foot variances.

The Zoning Board of Appeals received the application on October 5, 2023 and set a public hearing for November 2, 2023 and the notice was published in accordance with local law. .

Mr. Fredrickson stated that he received one telephone call inquiring about the project, but no concerns were expressed.

Ms. Dayton asked Eric Mucha to present the project.

Mr. Mucha advised that in 1983 the Neff family split the property into 2 parcels. The parcel now owned by Frank Knap is bottle shaped and the narrow strip is the only access to the parcel. A 10 foot wide driveway is proposed for 110 feet through the narrow strip to access the larger portion of the lot. A 5 foot variance on each side of the driveway is needed to construct a 10 foot wide driveway.

**Moved by Ms. McGoldrick to close the public hearing for TZP-2023-307, Irish Hill Road, Eric Mucha, Area Variance request from Section 5.6.C.1 side yard setbacks. Seconded by Mr. Wiechman. Ayes all. Carried.**

The Minutes of the October 5, 2023 meeting were read.

**Moved by Ms. McGoldrick to approve the Minutes of October 5, 2023 as read. Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton presented TZP-2023-304, 6690 Poverty Hill Road, William Gilbert, Area Variance request to the front yard setback. She noted that the ZBA classified the project as a Type 2 Action under SEQR at the October 5, 2023 meeting.

In determining whether to grant an Area Variance, 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 based on five criteria. The ZBA must grant the minimum variance necessary.

She presented the five criteria with staff analysis for the Board members 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?**

There appear to be several pre-existing structures on nearby properties that do not meet the setback requirement. It is not uncommon to find accessory structures located in the front yard area on other properties in the LD District.

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

There does not appear to be a reasonable alternative to achieve the same outcome. While there is sufficient land area behind the house to construct a pole barn, access to this portion of the property is limited due to the location of a well and septic system in the side yards, and a stream that limits access to the back portion of the property.

**3. Whether the requested area variance is substantial?**

The ZBA should determine if a 21-foot variance is substantial.

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

The project meets the definition of a Type 2 SEQR action. The current use of the property does not change. The project results in a minor increase in the intensity of the current use from a parking area to a garage. Land disturbance is minimal and does not appear to create drainage or stormwater concerns. Existing vegetation provides a partial buffer from the road and the neighboring property. The project does not adversely affect or impact streams, wetlands, flood hazard areas, farmland, traffic, water supply or septic sewage systems.

**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?**

Based on the other criteria, the difficulty does not appear to be self-created.

Ms. Dayton noted that a 21 foot variance is substantial but the ZBA has granted larger ones, since each request is a case by case issue.

The Board members agreed with the analysis of the five tests.

**Moved by Ms. McGoldrick that the Zoning Board of Appeals finds that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community and grants the 21 foot variance to the front yard setback to allow the construction of a 24 foot by 24 foot pole barn to be 29 feet from the property line where a 50 foot setback is required at 6690 Poverty Hill Road, as submitted in materials in TZP-2023-304 by William Gilbert. Seconded by Mr. Wiechman. Ayes all. Carried.**

Ms. Dayton presented TZP-2023-307, Irish Hill Road, Eric Mucha, a request for two area variances from Section 5.6.C.1 of the Zoning Code to allow the construction of a 10-foot wide driveway approximately 5 feet from adjacent parcels.

The Zoning board of Appeals received the application on October 5, 2023. A public hearing was set for November 2, 2023 and a notice was published in accordance with local law. She noted that the ZBA classified the project as a Type 2 Action under SEQR on October 5, 2023. Mr. Keyser advised that no written or verbal comments were received in response to the public hearing notice.

In determining whether to grant an Area Variance 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 based on five criteria. The ZBA must grant the minimum variance necessary.

Ms. Dayton presented the five criteria 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?**

The variances do not appear to create a situation or configuration that will be seriously out of place in the neighborhood. The relief sought by the applicant is needed to construct a driveway that meets the minimum width requirement under Town Zoning and only applies to the portion of the lot closest to the road that doesn't have enough width to meet the setback requirement. The proposed driveway meets the minimum separation recruitment of 24 feet from other driveways.

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

There is limited frontage to locate a driveway that meets the setback requirements. The width of the driveway cannot be decreased without an additional variance. Moving the driveway does not eliminate the need for the variances.

3. **Whether the requested area variance is substantial?**

The ZBA should determine if two 5-foot variances are substantial. Shifting the driveway would still require a 10 foot variance on one side.

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

The project meets the definition of a Type 2 SEQR action. The proposed driveway meets minimum width requirements which is intended to provide for adequate ingress and egress. Five feet on either side of the driveway for a limited distance from the road appears adequate for runoff and utilities. The project does not adversely affect or impact streams, wetlands, flood hazard areas, farmland, traffic water supply or septic sewage systems.

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 current lot was created in 1983, which predates current zoning and subdivision regulations and the difficulty does not appear to be self-created.

The Board members agreed with the analysis of the five criteria.

**Moved by Ms. Scheeler that the Zoning Board of Appeals finds that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community and grants a 5 foot variance on the north side of the property and a 5 foot variance on the south side of the property to allow the construction of a 10 foot wide driveway at Irish Hill Road as per materials submitted in TZIP-2023-307 by Eric Mucha/Frank Knab. Seconded by Mr. Wiechman. Ayes all. Carried.**

Mr. Fredrickson noted that the Town Highway Supervisor will have to review the driveway access from a Town Road.

Mr. Keyser noted that Reid Petroleum may be on the December meeting agenda if the Planning Board finishes the coordinated review and classifies the project as an Unlisted Action under SEQR at the November meeting. .

Mr. Keyser noted that Ben Slotman has sent an email to Board members for Sexual Harassment Training which needs to be completed by November 15, 2023. There will be in person training on November 14, 2023 at the Town Center.

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

The meeting was adjourned at 6:40 p.m.