

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS**

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

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

ALSO PRESENT: Gregory Keyser-Town Planner, Rich Rinko-Assistant CEO, Ben Slotman-Town Engineer, Joel Tanner-Applicant, Ollie Hazard- HoliHuts

Ms. Cindy Dayton, Chairperson called the meeting to order at 6:00 p.m. and opened the public hearing for **TZP-2022-170, 0 Bella Vista Drive, Joel Tanner, Area Variance requests.**

This is an area variance request from Section 3.4D(1) and 3.4D(2) for front yard and rear yard setbacks to allow the construction of a new 896 square foot single-family dwelling. The Minimum Front Yard setback required is 35 feet, proposed is 12' 1" for a variance of 22' 11" .The Minimum Rear Yard setback required is 25 feet, proposed is 8' 8" for a variance of 16' 4". We received a letter from Cattaraugus County Health Department with their comments on the water line hookup.

Ms. Dayton noted that Mr. Harry Weissman will recuse himself from voting on this application as he has real estate transactions with Mr. Tanner. He will however answer questions. She asked for questions or comments from the people attending.

Mr. Keyser advised that 2 written comments were received in response to the public hearing notice which was published in accordance with local law.

Mr. Ollie Hazard is in favor of granting the variances as the location of the dwelling would be above the pond and also would not interfere with or be too close to any other structure.

Warren Gelman of Hodgson Russ, Attorneys, representing the property owner at 2 Hilltop Drive which is adjacent to 0 Bella Vista Drive is opposed to the granting of the variances as the property at Hilltop Drive already has a drainage and water issue and they believe the granting of the variances will exacerbate the existing conditions.

Mr.Keyser noted that the ZBA has to do its due diligence with regard to concerns. He noted that the house will be built on piers and has been moved away from the pond to reduce any impacts.

Mr. Joel Tanner advised that water runoff from his property sheds to the wetlands and feeds into the culvert that leads away from Hilltop Drive. Nothing we are doing will impact their property. They are 3 to 4 feet lower than us and we did a geotechnical report which we will provide.The soil in this area is clay.

Mr. Keyser advised that the Board can adjourn the public hearing in order to review the geotechnical report and drainage plan.

Mr. Tanner said the geotechnical report will not address drainage.

Mr. Ben Slotman, Town Engineer said that he does not have information on the drainage plan.

Ms. Dayton noted that Bella Vista Drive needs to be widened to a 20 foot wide road.

Mr. Tanner said he plans to fill in the existing drive to make it 20 feet wide. Home owners at HoliHuts are on board with the plan

Mr. Keyser stated that if Mr. Tanner used the building envelope he would not need a variance. He moved the house to address environmental issues. He does not own the pond and part of the lot is in the designated wetlands.

Mr. Ollie Hazard of HoliHuts stated that he has no problem with the project as long as it does not affect the roadway and improves drainage. The HoliHuts HOA is in favor of the project as long as the roadway is clear.

Ms. McGoldrick asked, what would exacerbate water runoff if the house is on piers?

Mr. Slotman said that any structure will increase runoff - a roof will do so. The clay soil does not absorb water and there will be more runoff. Rain gardens are designed to absorb water on site.

Ms. McGoldrick asked about the runoff on the driveway/road?

Mr. Slotman said driveways and roads are impervious surfaces. There are different ways to mitigate runoff. NYS has management procedures in place. However any property less than one acre does not require a SWPPP.

Mr. Tanner said the road will be gravel with ditches on both sides that will feed down to the pond. We can slope the driveway so the runoff is to the sides of the driveway.

Ms. Dayton asked, has there ever been an issue of the pond overflowing?

Mr. Hazard said no and he has been there since 1966.

Mr. Keyser asked, is there a swale on site?

Mr. Tanner said there is a substantial ditch to the culvert.

Mr. Keyser noted that we will need a drainage plan to alleviate the concerns of the owners at 2 Hilltop Drive.

Ms. Dayton asked do we need a plan for widening the road?

Mr. Slotman asked, What does the ZBA usually look at? Roadway improvements will have to address the drainage. How do we show we did due diligence if we don't have a plan to look at?

Mr. Tanner stated that the driveway is 18 feet wide and skewed to the north with a 20 foot wide easement. The plan is to fill in the triangular zone at the corner for emergency vehicles.

Ms. Dayton asked, how does the Board want to proceed? Do we have enough information to say we have done our due diligence? Do we continue to discuss the issues?

Ms. McGoldrick asked, who is responsible for the road improvements?

Mr. Slotman said that HoliHuts owns and maintains the private road. They will need a permit for the road improvements and the Town will oversee the work.

Ms. Dayton asked, is it built to Town Road Standards?

Mr. Slotman noted that they are putting a road between two houses and we do not have anything to look at.

Mr. Tanner said the road will be built to the standards for a private road as they exist in HoliMont.

Mr. Keyser said he is concerned how they will handle drainage on site.

Ms. Dayton noted that the ZBA does not get involved with Site Plan review. She asked Mr. Tanner, where do you plan to be in a month?

Mr. Tanner said he would be ready to apply for a building permit and plans to make a complete application next week.

Mr. Keyser advised that HoliHuts will have to provide an easement document for the waterline.

Mr. Hazard said that the HOA Board does not have a problem with the waterline installation.

Mr. Slotman asked if the approval required a certain percentage vote by the membership?

Mr. Hazard said that an 8 member HOA Board will be voting on the easement, not the total HoliMont membership.

Ms. Dayton noted that the applicant cannot get a building permit until all the issues are addressed even if the variances are granted. Do we table the application and leave the public hearing open pending receipt of more information for the next meeting? Does the analysis of the five balancing tests provide enough information to grant the variances?

Moved by Ms. Scheeler to close the public hearing for TZIP-2022-170, 0 Bella Vista Drive, Joel Tanner, area variance request to the minimum front yard and rear yard setbacks. Seconded by Ms. McGoldrick. Roll call vote: Ms. McGoldrick-aye, Ms. Scheeler-aye, Mr. Weissman-abstain, Ms. Dayton-aye. Carried

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

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

Ms. Dayton presented TZIP-2022--170, 0 Bella Vista Drive, Joel Tanner, request for variances to the minimum front yard and rear yard setbacks for discussion.

Mr. Keyser advised that the application 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)(17) of SEQR

involving the granting of an area variance for the construction of a new single-family residence. No 239-m referral to the Cattaraugus County Planning Board is required. Following the close of the public hearing the ZBA has 62 days to take final action on the application. The ZBA must apply the Balancing Tests to consider the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community. and either approve, approve with conditions, or disapprove the area variances.

Ms. Dayton presented the 5 criteria and the staff 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 the granting of the variance.

The staff finds that an undesirable change will not be produced by the granting of an area variance. It appears that the proposed structure will not negatively impact the streetscape and that the architectural style has the potential to complement the subdivision. The lot is an irregular shaped lot encompassing approximately 0.41 acres. The project meets the minimum requirements for building size and lot coverage. There appears to be other structures in the subdivision that do not meet the minimum zoning requirements.

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 staff finds that a reasonable alternative has been considered. Due to the irregular configuration of the lot, there are limited siting options within the building envelope that meets the dimensional setback requirements. The building envelope is in a wetland area on the southwest corner of the lot, between Hilltop Drive and the existing pond. The applicant moved the location of the house to avoid impacting wetland areas and the bank of the pond.

3. Whether the requested variance is substantial.

The staff finds that the requested variances substantially greater than the lawful dimensions allow. While the proposed location of the building meets the minimum side yard requirements, the building will not be sited within any portion of the building envelope. The width of the lot at the proposed location of the building is approximately 38 feet as measured from the right of way easement to the rear property line. When compared to the width of the proposed building (approximately 16 feet), the requested variances are substantially different from the zoning requirements.

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

The staff finds the proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood. The proposed location of the building has the least impact on wetland areas and the pond. The applicant is required to connect to the existing water system and is proposing to construct an 8-inch waterline along Bella Vista Drive. Access is proposed from an existing private driveway along Bella Vista Drive. The driveway currently serves another residence and will need to be improved to meet minimum

code requirements. The proposed building will be constructed on piers which limits the amount of excavation that would have been required for a basement or a grade foundation. The project meets the definition of a Type 2 SEQRA action under SEQRA.

5. Whether the alleged self-difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but not necessarily preclude the granting of an area variance.

The staff finds that the self-difficulty is not entirely self-created. The applicant purchased the property in 2022. The lot was created in the 1980's which pre-dates the Town's current zoning and subdivision regulations. The Property is within the HoliHuts HOA, which as a subdivision that was approved by the Town Planning Board on March 15, 1966. While The property has been vacant since that time, the approved plat shows the intended use of the area for parking and stipulates that..."any change, erasure, modification or revision of the plat, as approved shall void this approval". The approval was also subject to requirements and conditions set forth in a resolution that is not available today. The subdivision as presently exists in other areas does not match the approved plan and subsequent development has been

The board members agreed with the staff analysis of the five balancing tests.

Ms. Dayton noted that the ZBA typically relies on the Town Planning Board and the engineering department to address issues.

Mr. Keyser advised that the driveway easement for a private road for future development has to be upgraded.

Ms. McGoldrick stated we did our due diligence. Improving the road is an asset.

Mr. Tanner said he will contact National Grid with regard to moving the power lines.

Ms. Dayton noted that we discussed the project with other issues at HoliHuts in mind.

Mr. Keyser noted that the Board should classify the proposed project as a Type 2 action under SEQRA. He offered a motion with conditions for the Board to consider.

Moved by Ms. McGoldrick that the project does not exceed any Type 1 thresholds under 617.4 of SEQRA and appears to meet the definition of a Type 2 action under 617.5(c)(17) of SEQRA involving the granting of an area variance for the construction of a new single-family residence. No further review under SEQRA is required. Seconded by Ms. Scheeler. Roll call vote: Ms. McGoldrick-aye, Ms. Scheeler-aye, Mr. Weissman-abstain, Ms. Dayton-ayes. Carried.

Moved by Ms. McGoldrick that based on its review of the five balancing tests and the application materials submitted in TWP-2022-170 by Joel Tanner, the Zoning Board of Appeals finds that the benefit to the application outweighs any detriment to the health, safety and welfare of the neighborhood and grants the variances requested for 0 Bella Vista Drive to allow the Minimum Front Yard setback to be at 12 feet 1 inch where 35 feet is required for a variance of 22 feet 11 inches (65%) and the Minimum Rear Yard

setback to be 8 feet 8 inches where 25 feet is required for a variance of 16 feet 4 inches (69%) with the following conditions:

- 1. Adequate ingress/egress along Bella Vista Drive shall be provided in accordance with applicable codes.**
- 2. The extension of public water supply along Bella Vista Drive will be in accordance with Town Standards and approved by the Cattaraugus County Health Department.**
- 3. The overhead power line will be relocated.**
- 4. Review and approval of the geotechnical report by the Town Engineer.**
- 5. Proposed water supply and sanitary disposal connections meet Town standards.**
- 6. A drainage and grading plan will be provided for review by the Town Engineer.**
- 7. Issuance of a building permit and subsequent construction is subject to review and approval of the building plans and inspection by the Town Code Enforcement Officer.**

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

Mr. Keyser advised that the applicants of the solar project on the former Crowley farm are working on the process for a use variance.

Mr. Keyser noted that New Leaf Energy, the applicant for the 3 Tier Solar Energy system at 6902 Simmons Road, plans to meet with the neighbors on Monday, February 6, 2023 for a visual sight analysis and revisions to the site plan.

Ms. Dayton advised that the committee to look at a Short Term Rental law for the Town met on Monday, February 1, 2023. Committee Members are: Matt McAndrew, John Zerfas, Bob Poole, Dan Druszynski, Harry Weissman and Cindy Dayton. They plan to meet monthly.

Mr. Rich Rinko noted that the Town of Great Valley just finished writing a short term rental law.

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

The meeting was adjourned at 7:40 p.m.