

**TOWN OF ELLICOTTVILLE  
ZONING BOARD OF APPEALS**

**Thursday, May 25, 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, Kelly Fredrickson-CEO, Kenneth Walter,, Barbara Walter-Applicants, Amanda Bishop-Nazareth, Eddie Nazareth-Applicants

Ms. Cindy Dayton, Chairperson called the meeting to order at 6:00 p.m. and opened the public hearing for **TZP-2023-151, 8151 Irish Hill Road, Kenneth Walter, area variance request from Section 3.4(D)(3).**

Mr. Walter presented his plan to construct a 24' x 36' pole barn approximately 10 feet from the side property line. He advised that he applied to the Town of Ashford for a building permit which they issued. Larry Feldman called him and advised that his property is in the Town of Ellicottville. He stopped work and applied to the Town of Ellicottville for a building permit.

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

Mr. Keyser advised that he had 2 telephone conversations with a neighbor who thought his survey showed the building on his property. Once the correct survey of the property was provided there were no further issues.

**Moved by Mr. Weissman to close the public hearing for TZP-2023-151, 8151 Irish Hill Road, Kenneth Walter, area variance request. Seconded by Ms. McGoldrick. Ayes all. Carried.**

The Minutes of the May 4, 2023 meeting were read.

**Moved by Ms. Scheeler to approve the Minutes of May 4, 2023 as read. Seconded by Mr. Weissman. Ayes all. Carried.**

Ms. Dayton presented TZP-2023-151, 8151 Irish Hill Road, Kenneth Walter, area variance request for discussion. She noted that the required side yard setback is 30 feet, proposed is 10 feet for a variance of 20 feet. The ZBA reviewed the application at the May 4 meeting and set a public hearing, the next step is to review SEQR and make a determination of significance. The ZBA has 62 days to act on the request following the close of the public hearing.

Mr. Keyser stated that the Planning Department recommends that the ZBA classify the project as a Type 2 Action under 617.5(c)(16) of SEQR involving the granting of an area variance from a setback requirement.

**Moved by Ms. McGoldrick that the Zoning Board of Appeals classify the project as a Type 2 Action under 617.5(c)(16) of SEQR involving the granting of an area variance from a setback requirement. No further review under SEQR is required. Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton stated that an area variance is the authorization by the ZBA for the use of land in a manner that does not comply with the dimension or physical requirement of the zoning regulations. 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. She presented the five criteria and the staff analysis for the ZBA 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?*

It is unknown whether there are other accessory structures in the immediate area that do not meet the minimum side setback requirements. However, there are several non-conforming lots, as well as principal structures in the immediate area that do not meet the minimum front yard requirements. The closest neighboring structure is more than 200 feet from the site of the proposed pole barn with natural vegetation in between.

Ms. Dayton noted that the neighbor's concern about the location of the barn has been addressed.

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 are sufficient reasonable alternatives under the Zoning Law. The property encompasses approximately 8.25 acs and there is sufficient land area to construct a pole barn that is compliant with the zoning requirements.

Ms. McGoldrick asked what is the rationale for the site of the barn?

Mr. Walter stated that he wanted it near the house and use the existing driveway. He did not want it on the hillside or in front of the house.

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

The variance requested is not substantial. While the applicant is requesting a 66% variance from the minimum requirement, the applicant was granted a building permit from the Town of Ashford in error, which allows accessory building to be located within 10 feet of the side property line.

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

The variance will not have an adverse effect on the physical and environmental conditions of the neighborhood. Land disturbance will be minimal and limited to construction of the pole barn. The project is sited on a portion of the property where tree clearing is minimal and will not impact wetlands, flood hazard areas or farmland.

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 difficulty was not self-created by the applicant. A building permit was issued in error and the applicant began construction with the understanding that he was compliant with the appropriate zoning regulations.

The Board members agreed with the staff analysis of the balancing test criteria.

**Moved by Mr. Weissman that based on its review of the balancing tests the Zoning Board of Appeals finds that the benefit to the applicant outweighs and detriment to the health, safety and welfare to the neighborhood or community and grants the area variance requested to allow the side yard setback to be 10 feet from the property line in order to construct a pole barn at 8151 Irish Hill Road as per materials submitted in TZP-2023-151 by Kenneth Walter. Seconded by Ms. McGoldrick. Ayes all. Carried.**

Ms. Dayton presented TZP-2023-160, 7328 Route 219 North, Manoel & Amanda Nazareth area variance request from Section 10.4C to allow the expansion of a non-conforming building involving the construction of a 24' x 24' (576 sf) one story addition.

Mr. Keyser advised that the property encompasses approximately 3.14 acres and is in the Low Density Residential and Conservation Zoning Districts. Pursuant to Section 1.7 of the Zoning Code, if any portion of a lot is in the Conservation District, the regulations for the Conservation District shall apply. The current use of the property is a single-family detached dwelling which is permitted in the Conservation District. The existing structure is entirely within the front yard and partially in the side yard, making it a non-conforming building that does not meet the minimum setback requirements for the Conservation District. Section 10.4.C states: *that a building or structure that is used for a conforming use but that does not meet the dimensional requirements of this law may not be expanded, if by such expansion the setbacks or other dimensional requirements would become more non-conforming, unless an area variance is granted by the Zoning Board of Appeals.*

The proposed addition is located on the rear side of the existing building and increased the footprint of the building that is non-conforming and requires the following variance: Section 3.4(D)(3) Side Yard Setback requirement 100 feet, proposed 90 feet for a variance of 10 feet.

Mr. Keyser noted that the addition at the rear does not affect the front yard setback and does not expand the side yard setback. The issue before the Board is whether to allow the

expansion of a non-conforming building already in the front yard setback. The applicant is looking for an interpretation of the zoning code.

Mr. Weissman stated that he is not sure the original intent of the Conservation District was to not allow expansion of homes. It is the same as the Scenic Byway which is to allow clear views.

Ms. Dayton asked, are the Board members leaning toward allowing that a request that does not change the requirements of a non-conforming structure does not require a use or area variance and would allow the CEO to issue a building permit?

Mr. Keyser advised that if the Board makes that determination it will apply to all requests in the future. The Village ZBA opted to have everything come to them for the process as the language is confusing and expansion of non-conforming structures requires a use variance.

**Moved by Mr. Weissman that the Zoning Board of Appeals determines that in the Conservation District a building or structure that is used for a conforming use but that does not meet the dimensional requirements may be expanded if by such expansion the setbacks or other dimensional requirements would not become more non-conforming, therefore a variance would not be required and a building permit could be issued. Seconded by Ms. McGoldrick.**

Ms. Dayton noted that Board members must register for the Local Government Conference at Houghton College in June by the end of May.

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

The meeting was adjourned at 6:42 p.m.