

**TOWN OF ELLICOTTVILLE  
ZONING BOARD OF APPEALS  
Thursday May 2, 2024 at 6:00 p.m. at the Town Center**

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

**ALSO PRESENT:** Gregory Keyser-Town Planner, Kelly Fredrickson-CEO, Jacob Alianello-MDA Consulting Engineers, Anthony Vilanti-Applicant, Larry Wagner, Steven Reid-Reid Petroleum (Applicant)

Ms. Cindy Dayton, Chairperson, called the meeting to order at 6:00 p.m. and presented the agenda.

The Minutes of the November 2,2023 meeting were read.

**Moved by Mr. Wiechman to approve the Minutes of the November 2, 2023 meeting as read. Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton presented TZP-2023-267, 6599 US Route 219, Reid Petroleum, Gasoline Service Station with General Retail and Drive-thru.

Mr. Keyser presented this application for area variances to the front yard and landscape buffer setbacks for the project to construct a new gasoline service station with general retail and drive-thru. The Zoning Board of Appeals received the appeal on 8/2/2023 and referred it to the Planning Board for review. The Planning Board completed SEQR on 4/22/2024, issuing a SEQR Negative Declaration and recommending the variances be approved based on site plan drawings reviewed 4/22/2024.

Mr. Steven Reid presented the project noting that there are 2 variance requests for the parking lot setback which is 20 feet. The proposed setback on Route 219 is 15.5 feet for a 4.5 foot variance. The proposed setback on Route 242 is 3 feet for a 17 foot variance. There are 2 variance requests for the landscape buffer which is 20 feet. The proposed setback on Route 219 is 15.5 feet for a 4.5 foot variance. The proposed setback on Route 242 is 3 feet for a 17 foot variance.

Mr. Reid presented his analysis of the 5 criteria that the ZBA uses in making a decision on the variance request:

**1. Whether the benefit can be achieved by other means feasible to the applicant?**

No. The project has a substantial DOT ROW that borders Reids proposed project along 219 and 242. With the ROW included the distance from the road to the property line along 219 is

41' 9" and 55' 10" along 242. Given the distance from the road to the property line we do feel and would assert that the spirit of the code is being met as a substantial green space buffer will in fact exist at this location in excess of the 20 foot requirement.

**2. Whether there will be an undesirable change in the character of the neighborhood or to nearby properties?**

Granting a landscape buffer variance would not be an undesirable change to the neighborhood's character or to nearby property. The green space buffer area between the proposed development and the surrounding areas is greater than 20 feet along Routes 219 and 242. The surrounding properties are a cemetery and a brewery and tap room and our project would not adversely impact them.

**3. Whether the request is substantial?**

The request is not substantial and while it may feel that the requested area variances may appear substantial on paper, this doesn't mean any harm will be generated on the surrounding community. He referred to the Matter of Frank v. Schever, the lot in question was 19,983 sf. The zoning code required a minimum lot size of one acre (43,560 sf). The variance at issue was more than 54%, and on paper was an enormous ask. However, the court ruled that no harm would result to the community and the court directed the zoning board of appeals to grant the application.

**4. Whether the request will have an adverse physical or environmental impact?**

The requested variance will not have an adverse physical or environmental impact. The site plan has been designed with as much open space as possible and as a result our plan meets or exceeds the 30% open space requirement. Without the grant of the variance the 30% open space would likely not be met, and the site vehicle traffic circulation would be more constrained and less safe for customers entering and exiting the location. The proposed landscaping along Route 219 is extensive.

**5. Whether the alleged difficulty is self-created?**

The alleged difficulty is not self-created as the proposed development in question would under normal circumstances have enough space to more than meet the code requirements for landscape buffers, in this case due to larger than normal DOT ROW's this is not possible.

Reid is seeking relief in the form of an area variance for the parking lot setback provisions in the Town of Ellicottville code section 3.9(B)(1). Code allows for a 20 foot parking lot setback along Route 219 and Route 242. The Town Code defines a Parking Lot as: "An area other than a road used for the parking of more than four vehicles". Along Route 219 the distance from the property line to an area where 4 or more automobiles would be parked is 81'10". Along Route 242 the distance from the property line to the area where 4 or more vehicles would be parked is 35", both meet the 20 foot requirement. Given the definition, Reid feels that the proposed site plan does satisfy the code's requirements and that a variance should not be required. There are no areas on the site plan within 20 feet of the property line upon

which more than 4 vehicles will be parked. There are only drive aisles, but no areas that can be used for parking of more than 4 vehicles.

Mr. Reid requested that the Zoning Board of Appeals grant the requested area variances in furtherance of the proposed Crosby's convenience store project. The benefits that will be received by the applicant if requested relief is granted outweigh any detriments to the local area.

Ms. Dayton asked for questions or comments from the Board members.

Mr. Weissman noted that the applicant is requesting variances for parking lot setbacks, but given the definition of a parking lot, variances may not be required as the areas are drive-thru lanes to access the entrance and exit.

Ms. Dayton asked if all paved areas are parking lots and need a variance. She asked if the 2 aprons off the highway are concrete?

Mr. Reid said yes.

Mr. Weissman asked if there will be diesel fuel?

Mr. Reid said yes, but not for trucks. The pump closest to the creek will be diesel.

Ms. McGoldrick asked about the vehicle chargers?

Mr. Reid said they are putting in the infrastructure, but have not found a suitable partner to install the chargers.

Mr. Keyser stated that the initial application required 7 area variances. After the Planning Board Review, 3 variances were eliminated and the remaining 4 were reduced. The Special Use Permit and Site Plan review process will continue after the ZBA makes a decision on the variances. The Planning Board classified the projects as an Unlisted Action and coordinated the environmental review of NYSDEC, NYSDOT and Cattaraugus County Health Department. A SEQR negative declaration was issued on April 22, 2024.

If the ZBA feels the application is complete a public hearing can be set for the June meeting. Does the Board agree with Mr. Reid that the definition of a parking lot negates the need for variances? Board members felt the variances are required.

Mr. Keyser noted that the next meeting is June 6, 2024.

Ms. Dayton noted that the Southern Tier Local Government Conference at Houghton College is that day and many board members are attending and may not be available for a 6:00 p.m. meeting. Following discussion the meeting date was set for June 13, 2024 at 6:00 p.m.

**Moved by Mr. Weissman to set a public hearing for TZP-2023-267, 6599 Route 219, Reid Petroleum, Front yard setback variances for proposed retail gasoline station for June 13, 2024 at 6:00 p.m. Seconded by Mr. Wiechman. Ayes all.**

Ms. Dayton presented TYP-2024-019, 2 Rogers Road, Anthony Villani, rear yard setback and minimum accessory apartment size variance requests.

Mr. Keyser presented his staff report on this application for area variance requests involving the construction of a new single-family residence with attached garage, and a detached barn with an accessory apartment off of Sugartown Road. Per Section 3.2D(2) The rear yard setback for buildings in the AR District is 60 feet. The proposed principal building is setback 44.58 feet from the rear property line for a variance request of 15.15 feet or 25.8% from the minimum requirement. The proposed retaining wall in the rear yard is setback 30 feet from the property line for a variance request of 30 feet or 50% from the minimum 60 foot requirement. Per Section 12.11B(5) the Maximum gross floor area for accessory apartments is 1,200 square feet. The gross floor area for the proposed accessory apartment is 1,268 square feet for a variance request of 68 square feet or 5.6% from the maximum requirement.

The project does not exceed any Type 1 thresholds and meets the definition of a Type 2 action under SEQR. No further review is required. The ZBA should classify the project as a Type 2 SEQR Action. No Cattaraugus County Planning Board referral is required.

Mr. Alianello, representing the applicants presented the site plan and proposed project. He noted that the applicant is willing to reduce the square footage of the accessory apartment if necessary. However the footprint of the barn will not change. The lot has frontage on Rogers Road for the principal structure and frontage on Sugartown Road for the barn with accessory apartment.

Ms. Dayton asked if there was frontage on only one road would the variance be for a side yard setback instead of 2 rear yard setbacks?

Mr. Keyser said yes. The way the lot was formed per the zoning gives it double frontage.

Ms. Dayton asked why are the 2 buildings sited so far apart?

Mr. Alianello said they are sited on the most flat areas of the lot to keep buildings off of steep slopes and also for driveway access.

Ms. Dayton asked if the lot has municipal water service?

Mr. Alianello said no, there will be a well and two if necessary as well as a septic system.

Ms. McGoldrick noted that the structures appear to be two separate houses as the apartment has 3 bedrooms.

Mr. Keyser advised that the plan shows the first floor of the barn as a storage area with the apartment on the second floor.

Mr. Villani said the apartment is a secondary space. The main house is 3700 square feet.

Ms. Dayton asked if the bedrooms over the attached garage are part of the principal structure?

Mr. Villani said yes.

Ms. Dayton asked if the wells and septic system are approved by the Cattaraugus County Health Department?

Mr. Alianello said they have approved the concept but have not notified us of the approval.

Ms. Dayton asked do you know when you will get Cattaraugus County Health Department approval?

Mr. Keyser said Cattaraugus County is waiting for the Site Plan review.

Ms. Dayton asked if the Planning Board had seen the plan?

Mr. Keyser said no. The Planning Board will look at the Site Plan and Special Use Permit for the accessory apartment after the ZBA review.

Mr. Keyser noted that the lots in the Rogers Road Subdivision were formed prior to the 1990 enactment of the Zoning Code, and are grandfathered.

Ms. McGoldrick asked what questions will the Planning Board ask in its review of the site plan?

Mr. Keyser said they will look at water and sewer and keeping structures off of steep slopes.

Mr. Alianello said this is the same plan we will present to the Planning Board with driveways on slopes less than 15%.

Ms. Dayton noted that in the plan submitted previously the barn was larger?

Mr. Alianello said no, the barn was the same size, but it had a retaining wall all the way around it. The proposed barn has a concrete wall built into the hill so we do not need a variance for a retaining wall. The principal structure was shifted so it is on a flat area.

Mr. Keyser said he can ask the consulting engineer to review the plan and offer an opinion.

Ms. Dayton noted that steep slopes are not under ZBA preview. Do we need the Planning Board and consulting engineer to weigh in before acting? Is it ok to ask the Planning Board for an advisory opinion?

Mr. Keyser said yes.

Mr. Alianello stated that he believes the submission is a complete application.

Mr. Keyser advised that the ZBA can table the application and send it to the Planning Board for a recommendation or set a public hearing for the June meeting and send it to the Planning Board and see what comments are received by the public hearing. He noted that the Planning Board is meeting on May 20, 2024 and will ask them if they have enough information for Site Plan Review.

Ms. Dayton said it is not a good thing to grant variances that will get changed later due to changes in the site plan.

Mr. Alianello stated that he is ready to submit a complete plan to the Planning Board. He requested that the ZBA acknowledge the plan as complete and set a public hearing.

**Moved by Mr. Wiechman to set a public hearing for TZP-2024-019, 2 Rogers Road, Anthony Villani, Area variances for rear yard setback and maximum square footage of an accessory apartment for June 13, 2024 at 6:00 p.m. Seconded by Mr. Weissman. Ayes all. Carried.**

Mr. Keyser advised that by holding the public hearing, comments from the public, planning board and consulting engineer can be taken into consideration when acting on the variances.

Ms. McGoldrick referred to the site plan and asked what kind of pumps are proposed? How common are they?

Mr. Weissmans said they are very common and will be part of the Cattaraugus County Health Department review of the water and septic system.

Mr. Alianello said the pumps are part of a reliable septic system design.

Ms. Dayton referred to the email for the June 6, 2024 Southern Tier Local Government Conference at Houghton College for a training opportunity. Do we register ourselves?

Mr. Keyser said if you are attending just respond to the email and Tracey Stokes will register you to the conference.

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

The meeting was adjourned at 7:30 p.m.