

**TOWN OF ELLICOTTVILLE**  
**ZONING BOARD OF APPEALS**  
**Thursday, June 13, 2024 at 6:00 p.m. at the Town Center**

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

**ALSO PRESENT:** Gregory Keyser-Town Planner, Kelly Fredrickson-CEO, Steven Reid-Reid Petroleum (Applicant) William Robbins & Susan Robbins-Applicants, Jack Kramer

Ms. Cindy Dayton, Chairperson called the meeting to order at 6:00 p.m. and presented the agenda. Mr. Keyser noted that the agenda has been revised. The public hearing notice for 2 Rogers Road, Anthony Villani was not published in the local newspaper. It will have to be rescheduled for the July meeting.

Ms. Dayton opened the public hearing for **TZP-2023-267, 6599 US Route 219, Reid Petroleum, variance requests to the front yard parking lot and landscape buffer setbacks for a Gasoline Service Station and General Retail with Drive-thru**. She noted that the project was referred to the Town Planning Board for their review and comments on the site plan.

Mr. Steven Reid, Applicant presented the project with 2 variance requests for the parking lot setback which is 20 feet. The proposed setback on Route 219 is 15.5 feet for a variance of 4.5 feet. The proposed setback on Route 242 is 3 feet for a variance of 17 feet. 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 variance of 4.5 feet. The proposed setback on Route 242 is 3 feet for a variance of 17 feet.

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

1. Whether the benefit can be achieved by other means feasible to the applicant?
2. Whether there will be an undesirable change in the character of the neighborhood or to nearby properties?
3. Whether the request is substantial?
4. Whether the request will have an adverse physical or environmental impact?
5. Whether the alleged difficulty is self-created?

He noted that the site plan presented at this meeting includes the recommendations of the Planning Board.

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

Mr. Jack Kramer stated that this is a complex project at the gateway to Ellicottville. Who will maintain the NY State right-of-way?

Mr. Reid said NY State will maintain it. We can ask to do the maintenance if necessary..

Mr. Kramer asked will there be a canopy with Crosby's all over it?

Mr. Reid said there will be a canopy with the Crosby logo on two sides.

We tried to design the building to be compatible with the area and fit the community.

Mr. Weissman asked if the right-of-way is measured from the centerline of the road to the property line?

Mr. Reid said yes.

Ms. Dayton referred to the lighting plan which is part of the Planning Board review of the site plan. She hopes the Planning Board will look at "night sky initiative"

Mr. Keyser advised that the Planning Board reviewed the lighting plan and changes have been made to reduce light spillage onto neighboring properties.

Ms. Dayton referred to the signage. There are a number of signs for the building and canopy. The Planning Board should consider the number of signs proposed.

Mr. Keyser advised that the Planning Board has looked at the signs and has concerns with the back lit letters.

Ms. Daytona asked about colors?

Mr. Reid said the signs are red and blue.

Ms. Dayton asked if there is a landscaping plan?

Mr. Reid said yes. Shrubs and trees are proposed and he listed the species.

Ms. Dayton asked if a landscape bond is being considered to insure that it is completed in a timely manner?

Mr. Keyser said he can suggest it to the Planning Board.

Ms. McGoldrick asked about trash receptacles?

Mr. Reid said a dumpster site is proposed for all trash.. There will also be recipeticals near the fuel pumps.

Ms. Dayton asked, is the drive-thru window at the rear of the building?

Mr. Reid said yes. Customers will use an app to order and pay, then pickup at the window instead of having to come inside. There will also be a menu board for order and pickup. He noted the location of the menu board on the site plan.

Ms. Dayton asked about the large sign on the corner advertising gas and prices?

How high is it and is it in the green space?

Mr. Reid said it is 20 feet high and is located in the green space.

Ms. Dayton said her concern is line of sight.

Mr. Reid said it will not create a line of sight issue.

Ms. Dayton asked what the display would advertise?

Mr. Reid said the sign will have Crosby's at the top, then gas prices and advertise pizza and subs. Only the prices will change. The other wording will be permanent. There is no flashing, the lighting will be constant.

Ms. Dayton asked, will there be signage at the fuel pumps?

Mr. Reid said that NY State requires a point of purchase sign on top of the pumps.

Ms. Dayton noted that the Planning Board should take a close look at the signage and the number of signs proposed.

Mr. Kramer asked, is there a height limit for signage?

Mr. Keyser said the maximum height allowed is 20 feet.

Ms. Dayton asked if the signs were internally lighted?

Mr. Reid said no they are back lighted.

Ms. McGoldrick noted that the plan includes electrical vehicle chargers. What is the process?

Mr. Reid advised that they will put in the infrastructure for future hookup depending on who we will be working with.

Mr. Weissman noted that Tim Horton's address is 6599 Route 219. Crosby's may want to consider a Route 242 address to avoid confusion. Mr. Reid said he will contact Mr. Weissman as the Assessor for a correct address to avoid any duplication.

**Moved by Mr. Weissman to close the public hearing for TZP-2023-267, 6599 Route 219, Reid Petroleum, area variance requests in order to construct a gasoline service station with general retail and drive-thru. Seconded by Ms. Scheeler. Ayes all. Carried.**

The Minutes of the May 2, 2024 Meeting were read.

**Moved by Ms. Scheeler to approve the Minutes of the May 2, 2024 meeting as read. Seconded by Ms. McGoldrick. Ayes all. Carried.**

Ms. Dayton presented TZP-2024-027, 6661 Upper Road, William Robbins, area Variance request for the side yard setback and building height.

Mr. Keyser presented this application involving the proposed construction of a 1,772 sf, 3 story addition to an existing residence. The applicant is appealing a zoning permit denial requesting variance and a zoning interpretation from dimensional requirement for the Medium Density District. Section 3.4D(3) Side Yard Setback requirement is 15 feet. The proposed retaining wall is 13 feet from the east property line for a variance request of 2 feet.

Section 3.9C(1)a- Maximum Building Height is 35 feet. The proposed height of the principal building is 46.1875 feet based on a gable roof and measuring from the midpoint of the roof to the natural grade which is approximately 30 feet.

Section 3.9C(1)b- Maximum Building Height. The maximum height for detached single-family homes is 2½ stories. The height of the proposed addition is 3 stories for a variance of ½ story.

Mr. Bill Robbins, Applicant presented his plan to add on to the existing house as they plan to live in it full time. The addition mirrors the existing structure. The peaks will match. He had hoped to have a 3 car garage but there is not enough room.

Ms. Dayton noted that there are large trees between the properties. Are you taking any more down?

Mr. Robbins said not unless necessary. I want to leave as many as possible, including vegetation.

Mr. Keyser advised that the zoning code does not have a standard for roofs of this slope so the strictest standards for roofs apply. The code refers to mansard and gable but does not include sloped roofs. The existing house is nonconforming and built in 1970.

Ms. McGoldrick asked about the building materials?

Mr. Robbins said the siding will be hardie board. The roof will not be metal.

Ms. Dayton asked are you remodeling the rest of the house?

Mr. Robbins said yes. It will be a total rebuild with new windows.

Ms. Dayton advised that the Board needs to determine how to measure the roof height and determine if the proposed addition is 3 stories or 4 stories.

Mr. Weissman noted that the garage makes it 3 stories. Is it only a garage?

Mr. Robbins said yes a garage for storage. The back wall of the garage is below grade.

Ms. Dayton asked, is the garage considered living space?

Mr. Fredrickson said it is considered a story unless 6 feet if it is underground and then it is considered a basement.

Mr. Fredrickson asked if there is living space in the existing basement?

Mr. Robbins said no.

Mr. Fredrickson advised that if the improvements are substantial they need to meet the current zoning code. The definition of substantial is 50 percent of the value of the structure.

Ms. McGoldrick asked even if it is called 4 stories, is the concern that it is too substantial?

Ms. Dayton said the concern is the number of variances requested. However the proposed addition fits into the character of the neighborhood.

Ms. Dayton asked do we agree with the way Mr. Keyser measured the roof height or do we want to measure from the midpoint? She noted that the intent of the zoning code was to measure all roofs from the midpoint.

Mr. Robbins noted that all the roofs on the house are angled.

Mr. Keyser advised that if measured from the midpoint the addition would meet the 35 foot height requirement and a variance would not be required.

Ms. Dayton asked if Board members felt the application is complete and a public hearing be set for the July meeting?

**Moved by Mr. Weissman to set a public hearing for TZP-2024-027, 6661 Upper Road, William Robbins, area variance request for side yard setback at 13 feet where 15 is required, height of 4 stories where 2.5 is required in order to construct an addition to an existing house for July 11, 2024 at 6:00 p.m. Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton asked if we need to reset the public hearing for TZP-2024-019, 2 Rogers Road, Anthony Vallani, area variance request as the notice was not published for this meeting?

Mr. Keyser said yes.

**Moved by Mr. Weissman to set a public hearing for TZP-2024-019, 2 Rogers Rogers Road, Anthony Vallani, area variance for rear yard setbacks to the principal structure and accessory structure for July 11, 2024 at 6:00 p.m. Seconded by Ms. McGodrick. Ayes all. Carried.**

Ms. Dayton presented TZP-2023-267, 6599 Route 219, Reid Petroleum, area variance requests for front yard setbacks for parking lot and landscape buffer for proposed gasoline service station, general retail and drive-thru.

Mr. Weissman said he had no problem granting the variance requests.

Mr. Keyser advised that he reviewed the applicants analysis of the five criteria that the ZBA considers when granting a variance and agreed with their findings.. The Planning Board as Lead Agency acted on SEQR and issued a Negative Declaration.

Ms. Dayton noted that after the Tim Horton's project was approved including the granting of variances the outdoor patio was not built to the approved plans. If plans that come to the Board are to be considered conceptual and not complete then we need to have a condition that if there are any changes to the site plan, parking plan or building design the variance granted will be void.

Mr. Fredrickson advised that he reviews the plan before issuing the building permit.

Ms. Dayton said that she hoped that Crosby's will be a good neighbor in maintaining the property. That is why I suggested bonding for the landscaping.

Ms. McGoldrick asked will the SEQR review consider pollution from idling vehicles in the drive-thru line?

Mr. Keyser said it could be considered.

Ms. Mc Goldrick said she is concerned with the 20 foot high sign.

Ms. Dayton advised that the ZBA could send a list of concerns on issues to the Planning Board for their consideration including that the signage is in compliance with Article 12 of the Zoning Code.

**Moved by Mr. Weissman that based on its review of the five criteria the Zoning Board of Appeals finds that the benefit to the applicant outweighs any detriment to the health, safety and welfare of the neighborhood or community and grants the following variances requested in order to construct a gasoline service station, general retail and drive-thru at 6599 Route 219 as per plans dated 4/12/2024 and submitted in materials in TZP-2023-267 by Reid Petroleum:**

- 1. Front yard setback for parking lot along Route 219 to be 15.5 feet where 20 feet is required for a 4.5 foot variance.**
- 2. Front yard setback for parking lot along Route 242 to be 3 feet where 20 feet is required for a 17 foot variance.**
- 3. Front yard setback for landscape buffer along Route 219 to be 15.5 feet where 20 feet is required for a 4.5 foot variance.**
- 4. Front yard setback for landscape buffer along Route 242 to be 3 feet where 20 feet is required for a 17 foot variance.**

**With the condition that any changes in the site plan, building design, signage, lighting plan or parking lot configuration will void the granted variances. Seconded by Ms Scheeler. Roll call vote: Ms. Scheeler-yes, Ms. McGoldrick-yes, Mr. Weissman-yes, Ms. Dayton-yes. Carried.**

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

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