

**TOWN OF ELLICOTTVILLE  
ZONING BOARD OF APPEALS  
Thursday, July 11, 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:** Kelly Fredricson-CEO, Jacob Alianello-MDA Consulting Engineers,  
Anthony Villani-Applicant, Larry Wagner-2 Rogers Road, William & Susan  
Robbins-Applicants, Michael Cassidy-8 Rogers Road

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

There is a public hearing for Anthony Vallani, 2 Rogers Road, rear yard setback variance for proposed residential structure and a public hearing for William Robbins, 6661 Upper Road, side yard setback variance for a retaining wall and height variance for the number of stories. She noted that the public hearing for 2 Rogers Road set for June 13, 2024 could not be held because the newspaper did not publish the notice. It was reset for July 11, 2024.

Ms. Dayton opened the public hearing for **TZP-2024-019, 2 Rogers Road, Anthony Vallani, area variance request to rear yard setbacks for a principle structure and accessory building.**

Mr. Jacob Alianello, representing the applicant presented the site site plan and proposed project. The request for variances for the principal structure and the retaining wall are necessary as this is a corner lot with two front yard setbacks.

The principle structure is set 44.5 feet from the rear property line where a 60 foot setback is required for a variance of 15.5 feet. The proposed retaining wall for the accessory structure in the rear yard setback is 30 feet from the property line where 60 feet is required for a variance of 30 feet or 50%. He noted that the square footage of the accessory apartment has been reduced from 1268 square feet to 1200 square feet which meets the maximum allowed and they are no longer requesting a variance.

By moving the house down the hill we are keeping off steep slopes.

Ms. Dayton asked, if you move further down the hill will you be within the setback requirements?

Mr. Alianello said yes. He noted that the accessory apartment will require a Special Use Permit from the Town Planning Board.

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

She noted that a review by an independent engineer was requested and read the June 10, 2024 letter from Matthew Zarbo, Square Engineering D.P.C. which included a note that the lots predate the current steep slope regulations. The design will need significant grade adjustments, but the site plan appears to be acceptable. Permanent erosion protection should be provided where channelized flow is created by site grading. The design should include measures to ensure that slope erosion does not occur as a result of the project. This can be done utilizing rip rap and flow dispersion design techniques

Ms. Dayton asked, have adjustments been made per the letter?

Mr. Alianello stated that there is a drainage swale on the left side of the property and they can add rip rap. He did not prepare a new plan but will comply with the request to manage the hillside water runoff.

Ms. Dayton noted that you cannot have more flow than currently exists.

Ms. McGoldrick asked about water runoff from the driveway?

Mr. Alianello said the driveway access is from Rogers Road at 11 percent slope where the precedent for driveways is 15 percent slope.

Ms. McGoldrick asked about a landscape plan?

Mr. Alianello said there is no landscape plan, but a lawn and low grasses will be planted and maintained.

Ms. McGoldrick noted that the engineer's letter noted that the lots predate the current regulations.

Mr. Alianello said that some regulations apply and some don't because the subdivision predates the current zoning code.

. Mr. Vallani said there will be landscape beds and low grass on the banks to hold back soil erosion.

Ms. McGoldrick asked, can you be sure the landscape will withstand more rainfall than usual?

Mr. Vallani said yes, they can make sure the banks are stabilized including with more rip rap.

Mr. Weissman noted that lots 6 and 7 are not stabilized.

Mr. Fredrickson advised that 2 letters were received in response to the public hearing notice which was published in accordance with local law. Both are in favor of the project. .

Mr. Weisman read the letters from Michael Rotella of 3 Rogers Road and Michael Cassidy of 8 Rogers Road for the record.

Mr. Weissman noted that Mr. Cassidy may deed a small portion of his land to Mr. Vallani. Mr. Vallani said he is purchasing a 30 x 30 foot triangle at the driveway entrance.

Mr. Alianello said they are waiting for the mortgage company to verify the sale. However this does not affect the variance request.

**Moved by Ms. McGoldrick to close the public hearing for TZIP-2024-01, Anthony Vallani, 2 Rogers Road, area variance requests to rear yard setback requirements. Seconded by Mr. Weissman. Ayes all. Carried.**

Ms. Dayton opened the public hearing for **TZIP-2024-027, William Robbins, 6661 Upper Road, area variance requests for side yard setback and height by the number of stories.**

Mr. Robbins presented his plans for an addition to the existing house which was built in the 1970's. The addition includes a garage, master suite and 2 bedrooms. The addition will match the existing house in style, materials and height. He is requesting an area variance from the minimum side yard setback requirement for the proposed retaining wall at 13 feet from the east property line where 15 feet is required for a 2 foot variance and a request to the maximum height for a single-family home in the Medium Density District for the proposed 3 story addition where 2 ½ stories is required for a ½ story variance.

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

Mr. Fredrickson advised that no written or verbal comments were received in response to the public hearing notice which was published in accordance with local law.

Ms. Dayton presented the staff report prepared by Mr. Keyser. She noted that during its initial review, the ZBA determined that the building met the intent of the zoning for height as measured in feet to the midway point between the peak and eave of the proposed roof. The project is a Type 2 Action under SEQR and the ZBA should classify the project as a Type 2 Action before acting on the variance requests. The ZBA must apply the balancing test criteria and make a final decision within 62 days after the public hearing is closed.

**Moved by Mr. Weissman to close the public hearing for TZIP-2024-027, William Robbins, 6661 Upper Road, area variance requests for side yard setback and number of stores. Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton opened the regular meeting. The Minutes of June 13, 2024 were read. Corrections were made.

**Moved by Ms. McGoldrick to approve the Minutes of the June 13, 2024 meeting as corrected. Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton presented TZIP-2024-019, Anthony Vallani, 2 Rogers Road, area variance requests for rear yard setbacks for residential structures for discussion. She noted that the project meets the definition of a Type 2 Action under SEQR and the ZBA should move to classify the project as a Type 2 Action before acting on the variance requests.

**Moved by Mr. Weissman that the Zoning Board of Appeals classifies the proposed project as a Type 2 SEQR Action. No further review is required. Seconded by Ms. McGoldrick. Ayes all. Carried.**

Ms. Dayton advised that the ZBA must consider the benefit to the application against the detriment to the health, safety and welfare of the neighborhood or community if the variance is granted. She presented the Balancing Test 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 granting of the area variance.**

The granting of area variance does not appear to allow development that will be seriously out of place in the neighborhood. The affected structures are sited in a manner that appears consistent with other developed property on Rogers Road and maintains a minimum distance sufficient to meet side yard requirements for the AR District.

**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 property encompasses approximately 4.75 acres and there does appear to be options for one or both affected structures to be sited further downhill away from the property line.

Ms. Dayton noted that moving the structure downhill will site them on steeper slopes

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

The requested variances do not appear to be substantial as the structures are sited in a manner that appears to be consistent with other developed property on Rogers Road and maintains a minimum distance sufficient to meet side yard requirements in the AR District.

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

The grant of area variances does not appear to have an adverse impact on the environment. The project meets the definition of a Type 2 SEQR action, which indicates that no adverse impacts are expected with this type of development. The Town Engineer and Town Planning Board have reviewed the plans and determined that there are not any site development concerns that would preclude the granting of the variances. It appears the structures have been appropriately sited to minimize development on the steep slope areas of the property.

Ms. Dayton referred to the engineers review and the suggestion of improvements to the drainage plan. Should this be a condition of ZBA approval?

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

The difficulty does not appear to be self-created. The slope of the site and double frontage create a situation in which the most suitable area of the lot for development is partially located in the rear yard setback area.

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

**Moved by Mr. Weissman that in accordance with Section 617 of SEQR Regulations, the Town of Ellicottville Zoning Board of Appeals classifies the request as a Type 2 Action involving the granting of an area variance for the construction of a single-family residence. No further review under SEQR is required. Seconded by Ms. McGoldrick. Ayes all. Carried.**

**Moved by Mr. Weissman that based on a review of the balancing tests criteria for a area variance, a 15.15-foot variance from the minimum 60 foot rear yard setback requirement be granted for the proposed single-family residence, an a 30-foot variance from the minimum 60-foot rear yard setback requirement be granted for the proposed retaining wall. The variances are being granted with the following conditions:**

- 1. Special Use Permit and Site Plan approval by the Town Planning Board.**
- 2. The Planning Board will make sure the project meets any subdivision rules.**
- 3. Adequate erosion protection will be provided on steep slopes.**
- 4. The septic system will be approved by the Cattaraugus County Health Department..**

**Seconded by Ms. McGoldrick. 3–Ayes, 1-Nay. Carried.**

Ms. Dayton presented TZIP-2024-027, William Robbins, 6661 Upper Road, area variance request to the side yard setback and the building height to 3 stories for discussion. The ZBA must classify the project as a Type 2 SEQR action before making a final decision on the appeal.

**Moved by Ms. Scheeler that in accordance with Section 617 of SEQR Regulations, the Town of Ellicottville Zoning Board of Appeals classifies the request as a Type 2 Action involving the granting of an area variance for the expansion of a single-family residence. No further review under SEQR is required. Seconded by Mr. Weissman. Ayes all. Carried.**

Ms. Dayton advised that the Board 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 Balancing Test 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 granting of the area variance?**

The granting of area variances does not appear to allow development that will be seriously out of place in the neighborhood. The proposed addition will match the height and architectural style of the existing building. The height variance sought by the applicant involves the number of stories only. During its initial review, the ZBA determined that the building met the intent of the zoning for height as measured in feet to the midway point between the peak and eave of the proposed roof. A variance granted for the number of stories does not affect the overall height of the building.

Ms. Dayton noted that the ZBA decided to measure the proposed roof from the midway point as the zoning does not specifically address this style of roof.

**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?**

There does not appear to be any other option available for the applicant to achieve the same outcome that is lawful under the zoning code for height. It appears the proposed retaining wall can be modified to meet setback requirements.

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

The requested variance for height does not appear to be substantial based on the analysis in Criteria 1 and 2.

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

The granting of area variance does not appear to have an adverse impact on the environment. The project meets the definition of a Type 2 SEQR action, which indicates that no adverse impacts are expected for the expansion of single-family residences.

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

The difficulty does not appear to be self-created for the height variance based on the topography and zoning definitions. The difficulty does appear to be self-created for the setback variance for the retaining wall.

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

Mr. Weissman referred to the letter from the Holiday Valley Building Committee and their comments and suggestions on their review and approval of the project. He noted the concern with the significant drainage contour which a six-inch deep, 10% slope swale. There is no plan on how the water is dispersed along the eastern property line. The applicants may need to address this with the neighbors.

Mrs. Susan Robbins said they have already discussed the issue with the neighbors.

**Moved by Mr. Weissman that based on a review of the balancing test criteria for a area variance, a 2-foot variance from the minimum 15-foot side yard setback requirement be granted for the proposed retaining wall, and ½ story variance from the maximum 2 ½ story requirement be granted for the proposed residential addition with the following condition:**

- 1. The applicant will address disbursement of water at the end of the 10% slope swale on the eastern property line as not to impact the neighbors property.**

**Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton advised that the next meeting is August 1, 2024.

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

The meeting was adjourned at 7:00 p.m.