

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS
Thursday, September 25, 2023, at the Town Center at 6:00 p.m.**

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

ALSO PRESENT: Gregory Keyser-Town Planner, Jim Churchill-Applicant, Lauren Adornetto-Attorney, 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-2023-242, 19 Plum Ridge, Jim Churchill, area variance request from Section 3.4(D)(3).**

Mr. Churchill presented a revised plan to construct a one-story rear addition approximately 6.5-feet from the rear property line. The original plan showed the proposed addition 5.3-feet from the rear property line, but an updated survey showed the rear property line farther from the proposed addition than what was originally anticipated. He also advised that the Homeowners Association has approved the addition.

Mr. Keyser advised that since the revised plan shows a reduction in the variance requested, the plan is not considered to be substantially different, and scheduling another public hearing is not necessary.

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

Mr. Keyser advised that no written or verbal comments were received.

Moved by Mr. Weissman to close the public hearing for TZP-2023-242, 19 Plum Ridge, Jim Churchill, area variance request. Seconded by Ms. Sheeler. Ayes all. Carried.

The Minutes of the August 8, 2023, meeting were read.

Moved by Ms. Scheeler to approve the Minutes of August 8, 2023 as read. Seconded by Mr. Weissman. Ayes all. Carried.

Ms. Dayton presented TZP-2023-242, 19 Plum Ridge, Jim Churchill, area variance request for discussion. She noted that the required rear yard setback is 15 feet, proposed is 6.5 feet for a variance of 8.5 feet. The ZBA reviewed the application at the August 8, 2023, 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 Mr. Weissman 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. 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 dimensional or physical requirements 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 balancing test criteria and the staff analysis for the ZBA to consider.

Criteria 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?

The ZBA must consider whether the dimensional alterations being proposed will result in a structure or configuration that will be seriously out of place in the neighborhood. The Planning Department finds that an undesirable change will not be produced nor a detriment to nearby property created by granting the requested variance based on the following:

- The Homeowner's Association has approved design of the project (see correspondence from Phillips Lytle dated September 6, 2023)
- Sufficient area remains between the project and Holimont so as not to directly interfere with the Condo Line Ski Slope.
- Other than the requested Area Variance, the project is compliant with current zoning.
- No other discretionary planning and zoning approvals are required.

Criteria 2 - Whether the benefit sought by applicant can be achieved by some method feasible for the applicant to pursue, other than area variance.

The ZBA should consider reasonable alternatives that are lawful under the Town zoning law. The Planning Department finds that there does not appear to be any other reasonable alternatives under the Town Zoning Law to achieve the same outcome. The ZBA should determine if it is reasonable for the applicant to consider a smaller addition that complies with the setback requirement. However, it appears the existing deck already encroaches into the rear yard setback and any expansion may likely require an Area Variance.

Criteria 3 - Whether the requested area variance is substantial?

The ZBA should make a reasoned judgement as to whether nonconformity being proposed is too great, as compared to the lawful dimensions allowed by the current zoning law. The ZBA should determine if a 8.5-foot variance (~ 56%) is substantial.

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

The ZBA should weigh the proposal's potential impact on such factors as drainage, traffic circulation, dust, noise, odor, aesthetic resources, and impact on emergency services, among others. The Planning Department finds that the variance will not have an adverse effect on the physical or environmental conditions of the neighborhood based on the following.

- The project meets the definition of a Type 2 SEQR action.
- The current use of the property and building does not change.
- The project results in a minor increase in the intensity of the current use.
- Land disturbance is minimal and does not create drainage or stormwater concerns.
- The project does not affect nor impact wetlands, flood hazard areas, farmland, or current traffic circulation.

Criteria 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 Planning Department finds that the variance is a self-created difficulty.

The ZBA discussed the Balancing Test Criteria and agreed with the staff analysis.

Moved by Ms. Scheeler that based on its review of the balancing test criteria the Zoning Board of Appeals finds that the benefit to the applicant outweighs the detriment to the health, safety and welfare to the neighborhood or community, and grants the area variance requested to allow the rear yard setback to be 6.5 from the rear property line in order to construct the proposed addition at 19 Plum Ridge. Seconded by Mr. Weissman. Ayes all. Carried.

Ms. Dayton presented TZP-2023-260, 7328 Route 219 North, Manoel & Amanda Nazareth area variance request from Section 10.4(C) to allow the expansion of a non-conforming building involving the construction of a 24' x 33' one story rear addition.

Mr. Keyser advised that the ZBA reviewed the project at the May 25, 2023, meeting, and determined that an area variance was based on the understanding of 24' x 24' addition that did not make the setbacks or other dimensional requirements more non-conforming. Additionally, he noted that it was discussed at the August 3, 2023, meeting that it appeared there was a new deck on the side of the house along Cotter Road that was not in the plans reviewed by the ZBA. The Building Department issued a stop work order and the applicant filed an application for an area variance.

Mr. Nazareth indicated that the original plans approved by the ZBA showed a 24' x 32' addition and that he believed the addition met the 100-foot setback requirement from the front property line along Cotter Road.

The ZBA reviewed the sketch plans and confirmed that the dimensions on the plans reviewed by the ZBA on May 25, 2023, were 24' x 32', but also noted that the sketch plan does not show the covered deck extending beyond the existing building of line of the existing structure. A proposed 8-foot deck extending beyond the existing house was illustrated on a profile sketch. The ZBA further reviewed

aerial photographs and parcel boundaries to determine if it was clear that the addition as currently presented met the setback requirement.

Much discussion took place.

Ms. Dayton asked if the ZBA could tentatively set a public hearing, contingent on Mr. Keyser confirming the need for an area variance with Mr. Nazareth. Mr. Keyser indicated yes.

Moved by Mr. Weissman to set a public hearing, contingent on the Planning Department confirming the need for an area variance, for TZP-2023-260, 7328 Route 219 North, Manoel & Amanda Nazareth, area variance request to the side yard setback along Cotter Road, for October 5, 2023, at 6:00 p.m. Seconded by Ms. Scheeler. Ayes all. Carried.

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

The meeting was adjourned at 7:15 p.m.