

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS**

Thursday, December 1, 2022 at the Town Center at 6:00 p.m.

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

ALSO PRESENT: Gregory Keyser-Town Planner, Kelly Fredrickson-CEO, Jeffrey Wayland-Applicant, Joel Tanner-Applicant

Ms. Cindy Dayton, Chairperson called the meeting to order at 6:00 p.m. She presented the agenda and opened the public hearing for **TZP-2022-197, 1 Four Wheel Drive, Jeffrey Wayland, area variance request to side yard setback to allow the construction of an accessory shed.** She asked Mr. Wayland to present his project.

Mr. Wayland advised that he is requesting a variance in order to place an 8' x 12' storage shed 12 feet from the west property line. The property is sloped in the front and rear and this is the only flat space to place the shed. The east side has a 15 foot setback and there is no room for the shed. The west and south sides are green space and the top of the hill is woods. The shed will be placed on piers and will have a metal roof. There is no encroaching on abutting property and he has let his neighbors know the plans.

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

Mr. Keyser said he did not receive any written or verbal comments in response to the public hearing notice which was published in accordance with local law.

Moved by Mr. Wiechman to close the public hearing for TZP-2022-197, 1 Four Wheel Drive, area variance request to the side yard setback. Seconded by Ms. Scheeler. Ayes all. Carried.

Ms. Dayton opened the public hearing for **TZP-2022-198, 6983 Dooley Road, Robert Palgutt, area variance request to front yard setback to allow the construction of an accessory shed.** She noted that the applicant is not present, but the ZBA reviewed the project and variance request at the November 3, 2022 meeting. She asked for questions or comments from the people attending.

Mr. Keyser said he did not receive any written or verbal comments in response to the public hearing notice which was published in accordance with local law.

Moved by Mr. Weissman to close the public hearing for TZP-2022-198, 6983 Dooley Road, area variance request to the front yard setback. Seconded by Ms. Scheeler. Ayes all. Carried

The Minutes of the November 3, 2022 meeting were read.

**Moved by Mr. Weissman to approve the Minutes of November 3, 2022 as read.
Seconded by Ms. Scheeler. Ayes all. Carried.**

Ms. Dayton presented TYP-2022-197, Jeffrey Wayland, 1 Four Wheel Drive, area variance to side yard setback for discussion.

Mr. Keyser advised that the ZBA should classify the application as a Type 2 SEQR action under 617.5(c)(12) involving the request for an area variance to allow the placement of a minor accessory structure less than the minimum required distance from the west property line. The west side yard setback requirement is 35 feet, proposed is 12 feet for a variance of 23 feet. Cattaraugus County Planning Board referral is not required.

Moved by Mr. Wiechman to classify the application as a Type 2 SEQR action under 617.5(c)(12) involving the request for an area variance to allow the placement of a minor accessory structure less than the minimum required distance from the west property line. Seconded by Ms. Scheeler. Ayes all. Carried.

Mr. Keyser stated that an area variance is the authorization by the ZBA for the use of land in a manor that does not comply with the dimensional or physical requirements of the zoning regulations. In making a determination, the ZBA must consider the benefit to the applicant against detriment to the health, safety and welfare of the neighborhood or community if the variance is granted. The ZBA must grant the minimum variance necessary.

Ms. Dayton offered the 5 criteria and the applicants response to the balancing tests for the Board to consider:

1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby property be created by the granting of the area variance?

The shed will not have an undesirable effect on the neighborhood as many lots and homeowners within Hoilhuts have similar sheds. The shed will be constructed to match the Chalet in terms of the exterior siding and roof and will be 113 feet from the front lot line, using only .6% of the open space on the lot.

2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?

There is no location on the property, within the setbacks, where the shed could be built and be effectively used. The 35 foot west setback abuts the main building. The east side setback does not have sufficient space to accommodate the shed within the 15 foot setback. Locating the shed in the front yard on the north side of the lot is not possible given there is a 12 foot slope. There is a 15 foot slope in the rear yard preventing locating it there.

3. Is the requested area variance substantial?

The variance is not substantial in that the existing lot is one of the largest in the Holihuts subdivision at 15,000 sq. ft. The existing Chalet has a footprint of 794 sq. ft. or 5% lot coverage. The shed would occupy an additional .6% lot coverage and the lot will have 94% open space with the addition of the shed.

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

The shed will occupy .6% of the existing open lot land. Based on the proposed location, no trees, or any other vegetation would need to be removed. The shed construction would not alter the slope of the existing land, nor the current natural water drainage on the lot.

5. Is the alleged difficulty self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance?

No. Given there are no other locations on the lot where the shed can be erected and provide efficient use. Given the existing Chalet does not have a basement, adequate storage space is very limited, and thus a shed would alleviate current storage constraints within the main.

Mr. Keyser said that the Planning Department agrees with the applicant's analysis of the 5 balancing tests. Zoning Board members also agreed with the analysis.

Moved by Mr. Wiechman to grant the area variance request to allow an accessory storage shed to be located 12 feet from the west setback line where 35 feet is required for a 23 foot variance at 1 Four Wheel Drive as presented in application materials in TZIP-2022-197 from Jeffrey Wayland. Seconded by Ms. Scheeler. Roll call vote: Ms. Scheeler-aye, Mr. Weissman-aye, Mr. Wiechman-aye, Ms. Dayton-aye. Carried.

Ms. Dayton presented TZIP-2022-198, 6983 Dooley Road, Robert Palgutt, area variance request to the front yard setback for discussion.

She read the letter from Mr. Palgutt outlining his project: He is requesting a variance in order to erect a shed on the driveway side of his property. The 12'x 20' shed will consist of a single peaked metal roof, with wood board and batten siding. There will be one double door at the front of the shed. The shed will be built offsite and delivered and placed on the location which I will prepare by leveling/grading and filling with stone. There will be a small wood ramp leading from the ground to the shed floor at the entrance.

The shed would be located approximately 50 feet from the centerline of Dooley Road. I am unable to place the shed further away from the front property line due to the topography of the land, and the trees that are in that area. The setback from the side property line will be approximately 40 feet. There are currently trees on 2 and a half sides of the proposed location, which will block views of this shed unless you are directly in front of the house.

The shed will be used for storage of lawn equipment, tools and an ATV with a plow. We currently have the ATV stored in a shed on the west side of the house. The sloped land

behind our house creates a very narrow passage to the north of the house, which is not large enough to drive the ATV or riding lawnmower through. The only way to get the ATV or mower from the current shed to the driveway is to drive across the front yard and up a narrow path near the driveway entrance. This is nearly impossible in the winter, rendering the ATV plow useless.

Due to the existing driveway location, topography of the land, and location of the house, the only viable location for the shed is the location requested.

Mr. Keyser advised that the variance request is to the Front Yard setback (west property line) where 60 feet are required and 25.25 feet are proposed for a variance of 34.75 feet (58%). The application is exempt from referral to the Cattaraugus County Planning Board. The ZBA must make a SEQR determination before taking action on the application. The Board should classify the application as a Type 2 SEQR action under 617.5(c)(12) involving the request for an area variance to allow the placement of a minor accessory structure less than minimum required distance from the front property line.

Moved by Mr. Weissman to classify the application as a Type 2 SEQR action under 617.5(c)(12) involving the request for an area variance to allow the placement of a minor accessory structure less than the minimum required distance from the front property line. Seconded by Ms. Scheeler. Ayes, all. Carried.

Ms. Dayton advised that 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. It must also grant the minimum variance necessary. She presented the criteria for the balancing test 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 the granting of an area variance?**

The proposed shed appears to be appropriate in height, area and style for the neighborhood.

- 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 appears to be limited siting options due to steep slope areas and existing vegetation.

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

Is 58% variance too great considering the size of the lot and limiting siting options?

Mr. Weissman said though the number is substantial, in reality it is not because of the topography and size of the lot.

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

Land disturbance appears to be minimal, and the proposed shed will be situated on a relatively flat area of the property adjacent to the driveway.

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.

Ms. Dayton noted that the difficulty is self created as the applicant has an option not to build a shed. It appears the 5 balancing tests are met.

Moved by Mr. Wichman to grant the area variance request to allow the accessory shed to be 25.25 feet from the front yard setback where 60 feet is required for a variance of 34.75 feet at 6983 Dooley Road as presented in application materials in TZIP-2022-198 received from Robert Palgutt. Seconded by Mr. Weissman. Roll call vote: Ms. Scheeler-aye, Mr. Weissman-aye, Mr. Wiechman-aye, Ms. Dayton-aye. Carried.

Ms. Dayton presented TZIP-2022-170, 0 Bella Vista-Holihuts, Joel Tanner, area variance request to the front and rear yard setbacks to allow the construction of a new residential structure.

Mr. Keyser presented his staff report on this request for an area variance from Section 3.4 (D)(3) to allow the construction of a new 896 square foot single-family dwelling. The property encompasses approximately 0.3 acres and is located in the Medium Density Residential District. The following variances are requested: Front Yard setback- required 35 feet, proposed 13' 4" for a variance of 21' 6". Rear Yard Setback-required 25 feet, proposed 8' 8" for a variance of 16' 4".

The application appears to meet the definition of a Type 2 action under 617.5(c)(17) of SEQR involving the granting of an area variance for the construction of a new single-family residence. The ZBA should classify the application as a Type 2 SEQR action before taking action. If the Board feels the application is complete a public hearing can be set for the January 5, 2023 meeting. A 239m referral to Cattaraugus County Planning Board is not required.

Mr. Joel Tanner, Applicant presented photographs and elevation drawings of the proposed unique bungalow which sits on stilts or piers. There is no foundation. A survey, wetlands mapping study of the pond and an engineering study on the dam located to the south have been done. This proposed site is the only location for the cabin on this parcel. He had planned to have the cabin on the pond bank, but because it is a designated wetlands that is not allowed.

Mr Weissman advised that he was the real estate agent for Mr. Tanner when he purchased the lot. He can recuse himself from discussion and voting if the Board feels it is a conflict.

Ms. Dayton asked if the Board felt it is appropriate for Mr. Weissman to answer questions as the Assessor? Board members said yes.

Mr. Weissman said HoliMont wants to sell the lot with the pond which is used as a retention pond. The survey shows that the owner of the adjacent property on Easy Street owns part of

the pond. The original owner had 2 lots with 1 house which he sold previously. He sold the second lot to Mr. Tanner.

Mr. Tanner stated that he has made an application to hook up to the Town water line. Also there is an easement on our land.

Mr. Keyser noted that Mr. Tanner had to apply to the Town and to Cattaraugus County Health Department for a water line from the trunk line to his property. The project is contingent on approval of the water line hookup to the Town water system. If not approved they will have to drill a well.

Ms. Dayton noted that if municipal water is available they have to tie into the line.

Ms. Dayton asked, will the overhead power lines be removed?

Mr. Tanner said they will be shifted by National Grid. The line only serves our property and one neighbor.

Ms. Dayton asked if parking is an issue?

Mr. Fredrickson said no, this is not a congested area.

Ms. Dayton asked if the Board feels it has enough information for a meaningful public review for January 5 or February 2? We have 62 days to set a public hearing and 62 days following the close of the public hearing to act.

Mr. Keyser said if you set a public hearing the applicant has to provide approved water line drawings for that meeting. If Cattaraugus County Health Department denies or changes the water line that will not happen.

Ms. Dayton said that without Cattaraugus County Health Department approval of the water line hookup the application is incomplete.

Moved by Mr. Wiechman to table TZIP-2022-170, 0 Bella Vista, Joel Tanner, area variance requests to front and rear yard setbacks pending notice from Cattaraugus County Health Department that the water line is approved. Seconded by Ms. Scheeler. Roll call vote: Ms. Scheeler-aye, Mr. Wiechman-eye, Ms. Dayton-aye. Mr. Weissman-abstain.

Mr. Keyser advised that the Town Planning Board has agreed to be Lead Agency in the SEQR process for TZIP-2022-135, Pivot Energy Tier 3 Community Solar Energy project at 6064 Route 242. He received responses from involved agencies which included comments and concerns with impact to farmland, flood hazard area, proximity to Great Valley Creek and visual impacts. The Town Planning Board will review the Full EAF and make a Determination of Significance and issue either a Negative or Positive Declaration.

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

The meeting was adjourned at 7:05 p.m.