

**Town of Erwin
Zoning Board of Appeals Meeting
And
Public Hearing**

February 26, 2013

Present: Frank Thiel, Ruth Fisher McCarthy, Jay McKendrick, Susan Fontaine, Gerry Yost, Kris West

Guests: Kurt Charland, Kayshup Shah, Wayne Kennedy, Rita McCarthy

Call to Order:

At 7:00 PM, Chairman Frank Thiel called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY 14870. As is their usual practice, the Zoning Board of Appeals will consider applications up until 9:00 PM, and will continue any unfinished business to the next regular scheduled meeting.

Prior Minutes:

The minutes of the January 22, 2013 meeting were approved as corrected by unanimous consent.

1. Request from Shaashwat, LLC to allow a lot size of .766 acres where 1 acre is required at 3133 Silverback Lane. Variance of §130-14 and Appendix B Density Control Schedule is requested. With Public Hearing.

Notification of this action was sent to 9 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, The Leader, and in the Star Gazette on February 17, 2013.

This is a Type II action under the State Environmental Quality Review Act. No SEQR action is required by the Zoning Board of Appeals. The Planning Board is Lead Agency for site plan and subdivision actions.

The property is located in R-S Regional Services District.

The applicant seeks to subdivide a parcel off the ALDIs lot to develop a 4,000 sq ft building, 2,000 sq ft Taco Bell and 2,000 sq ft restaurant or retail space. The proposed lot size is .766 acres where 1 acre is required. The applicant seeks relief of .234 acres.

The application was represented by Engineer Kurt Charland and developer Kayshup Shah.

Mr. Charland explained that the subdivision sought by Mr. Shah is the third parcel envisioned in the original ALDI development. In the original proposal, this parcel was designed for a 12,000 sq. ft. building. The current application is for a 4,000 sq ft building, a reduction of 8,000 sq. ft. The parking layout was designed to the most intensive use, restaurant, although the other half of the building could become retail. Per the request of the Planning Board, the applicant has eliminated the option of backing into the driving lane by eliminating the double row of parking. The exit of the drive-thru has also been moved so that it is 30 ft. from the intersection of the internal, access drives.

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The project is compliant with all storm drainage requirements. Lighting is dark sky compliant. There is a small amount, 5 ft. candles, of spillage but that is onto the shared access drives. ALDI has committed to changing the striping of the ingress/egress lanes to allow for a dedicated left turn exit lane.

In the original planning, ALDI would have kept the lots, but in order to meet Town Code regarding zoning, had to subdivide off the Five Star lot to meet Town requirements. It would be possible to make a 1 acre lot if this lot took over the shared access drives. Nothing would change in regard to the layout or development footprint. ALDI does not wish to relinquish their drives. ALDI maintains the roads.

The lot meets coverage percent requirements.

The Chairman opened the Public Hearing at 7:20 pm.

Wayne Kennedy, Acting Chairman of the Planning Board spoke on behalf of the Planning Board and stated that the Zoning Board's decision would determine whether or not the project proceeds.

All persons wishing to be heard, the Chairman closed the hearing at 7:21 pm.

Kris West questioned if the variance were denied could the project go forward. The answer was no.

The Zoning Board of Appeals considered whether the benefit to the applicant if the area variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. The Zoning Board of Appeals also considered whether:

(1). The requested variance will not produce an undesirable change in the character of the neighborhood:

A majority of the Board finds that the requested variance will not produce an undesirable change in the character of the neighborhood. This is a business area. The proposed development fits in. The lot lines could be moved around such that this parcel would meet the area requirement by placing the shared access drives with this parcel. The effect would be the same as if the parcel remained at the requested lot size except that the parcel would be unduly burdened with the shared access. One member objected on the basis that another business could create a detriment by putting a business on a small parcel and creating traffic issues.

(2). The requested variance will not produce an undesirable change in the character of the neighborhood.

A majority of the Board finds that the requested variance will not produce an undesirable change in the character of the neighborhood. The lot size alone is not a detriment. This development can occur as proposed regardless of lot size. One Board member felt that this project will negatively affect other properties due to the traffic it generates.

(3). There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.

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The applicant is requesting a 20 foot side yard setback where 50 feet is required. The applicant is seeking relief of 30 feet.

The application was represented by Engineer Kurt Charland and developer Kayshup Shah.

The engineer explained that in Regional Service, setbacks for rear and side is 50 ft. which would make the developable portion of the lot too small. In order to orient the building as required and fit in a drive-thru cannot be accomplished with the requisite setback. The development is not economically feasible without the second lease space. The issue here is the same as the lot size issue. The setback could be met and nothing about the footprint changed if this lot took the shared access drive. The subdivider, ALDIs, wants to keep and maintain the access drives.

A question was raised regarding snow removal. The developer replied that there was plenty of room for snow storage.

The Chairman opened the Public Hearing at 7:50 pm.

Wayne Kennedy, Acting Chairman of the Planning Board spoke on behalf of the Planning Board and stated that the Zoning Board's decision would determine whether or not the project proceeds.

All persons wishing to be heard, the Chairman closed the hearing at 7:51 pm.

The Zoning Board of Appeals considered whether the benefit to the applicant if the area variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. The Zoning Board of Appeals also considered whether:

(1). The requested variance will not produce an undesirable change in the character of the neighborhood:

The Board unanimously finds that the requested variance will not produce an undesirable change in the character of the neighborhood. The Board finds that the property is unique in that the setback could be met if the shared access drive were to be attached to this property instead of the ALDIs property. Regardless of ownership of the shared access drive, the placement of the building would not change and the appearance of the lot would be the same.

(2). The requested variance will not create a detriment to nearby properties.

The board finds unanimously that the requested variance will not create a detriment to nearby properties. Again, due to the unique circumstance of the access road, varying the setback does not place the building any closer to any other feature in the plaza.

(3). There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.

The Board unanimously finds that although the shared access drive could be attached to this property, it would be impractical to do so. For operation and maintenance purposes, ALDIs needs to retain ownership of the shared drive.

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(4). The requested area variance is not substantial.

The Board unanimously finds that the request is a 60% variance and therefore is substantial.

(5). The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

In concurrence with the above findings the Board finds unanimously that the setback from the access drive does not impact the physical or environmental conditions in the neighborhood or district.

(6). The alleged difficulty was not self-created (this consideration shall be relevant but shall not necessarily preclude the grant of the area variance).

The Board finds unanimously that the difficulty was self-created by virtue of the choice to subdivide the lands.

RESOLUTION TO APPROVE APPLICATION 2013-03 TO ALLOW A 20 FT SIDE YARD SETBACK WHERE 50 FT IS REQUIRED BASED ON THE FINDINGS AND THE UNIQUE CIRCUMSTANCES CREATED BY THE SHARED ACCESS DRIVE.

MOVED BY: RUTH MCCARTHY SECONDED BY: JAY MCKENDRICK
DISPOSITION: 5-0

Meeting was adjourned by unanimous consent at 8:00 pm.

Minutes Submitted by Acting Zoning Board Secretary

Rita Y. McCarthy