

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

**July 22, 2014**

**Present:** Acting Chairman Ruth Fisher McCarthy, Susan Fontaine, Jay McKendrick, Jody Allen

**Absent:** Kristine West, Dr. Frank Thiel

**Guests:** Kris Harrington, Diana Harrington, Ian Tuttle, Megan Tuttle, Brian Harris, Wayne Kennedy, Rita McCarthy, Barb Lucas

**Call to Order:**

At 7:00 PM, Acting Chairman Ruth Fisher McCarthy 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.

Minutes of the February 25, 2014 meeting have not been adopted.

**1. Request from Ian Tuttle for an Area Variance at 202 Beartown Road to allow a 1 ft side yard setback where 8 ft is required. Variance of §130-99.A.3 is requested. With Public Hearing.**

Notification of this action was sent to 43 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on July 13, 2014, and in The Leader.

This is a Type II action under the State Environmental Quality Review Act. ***No SEQR action is required.***

The property is located in an R12.5 Residential District.

This variance is governed by §130-99 Existing Undersized Lots since the lot dates from 1957 and the minimum width at building line is 80 ft., which does not meet the requisite 100 ft. Further, the house, built in 1957, is 17.3 ft from the side property line, and therefore does not meet the requisite 20 ft side yard setback.

In accordance with §130-99.A.3 the required side yard setback is 8 ft. The applicant is requesting a 1 ft setback to the adjacent, vacant 50 ft Right of Way/paper street. The applicant seeks a 7 ft relief.

Ian Tuttle presented the application and stated that he had spoken with the owner of the right-of-way bordering the property on the side where the variance is sought, prior to purchasing the home and was given permission to park vehicles there. The Tuttles currently mow the land. Mr. Tuttle was also told that the owner would sign any papers necessary to that end.

Acting Chairman Ruth Fisher McCarthy asked if there are any alternatives.

--- Mr. Tuttle said that he had tried to purchase ½ of the right-of-way, but has been unable to contact the owner.

Member Jay McKendrick questioned if the neighboring lot was buildable.

--- It is not buildable. It is a paper street connecting to land located behind the house.

Member Jody Allen questioned if it would be possible to build the dining/living area behind the house.

--- The Tuttles would prefer not to because the septic system is located there.

**The Chairman opened the Public Hearing at 7:15PM.**

A statement received via email from Doug and Ellen Walter, 200 Beartown Road, Painted Post, NY was read as follows:

"We live next door to Ian Tuttle. We believe that this variance should be accepted. This young couple are making this home look wonderful and a great asset to the neighborhood."

**All members from the public wishing to be heard, the Chairman closed the Public Hearing at 7:17PM.**

**The ZBA considers the Area Variance application and the public comment and makes findings on each of the Area Variance criteria**

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

The Board finds unanimously that the requested variance will not produce an undesirable change in the character of the neighborhood. The Board finds that this is a unique situation where the side yard abuts a paper street to an unbuildable lot. There will be no impact to the adjacent property. Further, the owner of a neighboring property spoke in favor of the application, and there were no negative comments.

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

The Board unanimously finds that the requested variance will not create a detriment to nearby properties. The garage is in keeping with other properties in the neighborhood, and there is no impact on the abutting property which is the paper street.

(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 finds unanimously that there is no other feasible method for the applicant to construct a two car garage. The applicant attempted to purchase the adjacent property, but the owner would not respond. There is no room on the opposite side. The property's septic system is in the rear, so there is no other location that is feasible.

(4) The requested area variance is not substantial.

The Board unanimously finds that the requested variance is substantial since it seeks 7 feet relief from an 8 foot requirement.

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

The Board finds unanimously that the requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. There will be 60 feet between the proposed structure and the next structure adjacent to it. The area drains to the rear of the property, so there will be no impact on adjacent properties. Most of the houses in the neighborhood have garages, so it is in keeping with the character of the neighborhood.

(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 unanimously finds that the difficulty was self-created.

**RESOLUTION TO APPROVE APPLICATION 2014-04 TO GRANT A 1 FT SIDE YARD SETBACK TO ALLOW FOR CONSTRUCTION OF A GARAGE AND LIVING AREA ADDITION BASED ON THE FINDINGS OF THE BOARD.**

**MOVED BY: JAY MC KENDRICK      SECONDED BY: SUSAN FONTAINE**

**THE RESOLUTION WAS AMENDED BY THE CONDITIONS THAT THE TUTTLES MUST OBTAIN A TOWN OF ERWIN HIGHWAY WORK PERMIT PRIOR TO CONSTRUCTION, AND NO PORTION OF THE BUILDING, INCLUDING ROOF OVERHANG, CAN BE CLOSER THAN 1 FT FROM THE PROPERTY LINE.**

**AMENDMENT ACCEPTED BY: JAY MC KENDRICK AND SUSAN FONTAINE**

**DISPOSITION: 4-0**

**2. Request from Diana and Kris Harrington for an Area Variance at 16 Crescent Drive for a 36 ft wide driveway where 20 ft is allowed and to allow for parking in the front yard where no parking is allowed. Variance of §130-67.G and §130-78.A.4.a and c is requested. With Public Hearing.**

Notification of this action was sent to 35 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on July 13, 2014, and in The Leader.

This is a Type II action under the State Environmental Quality Review Act. **No SEQR action is required.**

The property is located in an R7.2 Residential District.

The applicant seeks to widen the driveway in the front yard to allow two vehicles to park parallel to each other and perpendicular to the road at the intersection with the road.

Section 130-78.A.4.a Off-Street Parking and Loading requires that the parking spaces shall be on the buildable portion of the lot. R7.2 requires a 30 ft front yard setback. The entire width of the proposed parking area is within 30 ft of the road, and therefore is not within the buildable portion of the lot. Therefore, parking is not allowed in the proposed area.

Section 130-78.A.4.c states that no parking area shall encroach on the required front yard. In R7.2, the required front yard is 30 ft. Therefore, parking is not allowed in the proposed area.

Section 130-67.G Driveways requires that the maximum width for a residential driveway shall be not more than 20 ft. The existing driveway is 12 ft, and the applicant is seeking to add 20-24 ft, for a total width of 36 ft. The applicant seeks 16 ft relief.

Kris Harrington presented the application and stated that parking is necessary for 4 vehicles. He stated that Town Highway Superintendent Dan Rose and Code Enforcement Officer Doug Wicks both agree with the proposed change because it improves sight clearance and it was preferable to backing into the road.

Member Jody Allen said that she would need a statement directly from Dan Rose and Doug Wicks as to their position.

Member Susan Fontaine asked whether it would be possible to expand the other side of the driveway. Mr. Harrington stated there was a telephone pole and mailbox in the way.

Member Jody Allen noted that it appeared that the parking would be in the Town right-of-way.

Rita McCarthy noted that the Town road right-of-way is 50 ft, with the middle 20 paved, leaving 15 ft on each side off the edge of pavement.

Jody Allen questioned whether on-street parking was prohibited on that road.

Mr. Harrington responded that Dan Rose doesn't want parking on the street, but if denied this variance, he will have no other option but to park in the street.

Ruth McCarthy questioned the possibility of parking in the back.

Discussion centered around where the property line was and whether the proposed driveway was on Town property. Members Susan Fontaine and Jody Allen explained that the Board has required other applicants to provide data regarding property lines. Previous applicants have used the survey map they received when they purchased their property and drawn the proposed parking to scale on the map.

The Board determined that to make a decision, they require documentation of the actual property boundary and Town ROW, and a statement from Dan Rose.

**MOTION TO TABLE APPLICATION 2014-5.**

**MOVED BY: JAY MC KENDRICK      SECONDED BY: SUSAN FONTAINE**  
**DISPOSITION: 4-0**

Statements received from public:

Sandy & Gorden VanWormer, 25 Crescent Drive, Painted Post, NY, called to say they have no problem with the variance.

Email received on July 21, 2014: "I own 2 properties on Crescent Drive. 5 and 14. I do not like the appearance of the parking in the front yard. It looks like inner city slum when you turn the corner. If it was closer to the front of the house it might look better. If one is allowed it will open it for others and I don't think that will add anything to the neighborhood. It is an undesirable change for me. It is also hard to see around the cars/trucks when backing out of the driveway at 14 Crescent when they are parked in the front yard. Sorry for the email but I am on 3 weeks vacation. Rita Griffin-Shroyer"

**3. Request from Brian Harris for an Area Variance at 32 Hemlock Lane to allow a driveway slope of 18.3% where 10% is allowed and a slope of 4.6% for the first 25 feet where 2% is required. Variance of §130-68.I is requested. With Public Hearing.**

Notification of this action was sent to 36 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on July 13, 2014, and in The Leader.

This is a Type II action under the State Environmental Quality Review Act. No SEQRA action is required.

The property is located in an R12.5 Residential District.

The applicant has constructed a new residential dwelling unit and driveway. Due to the known issues regarding access and water/sewer utilities for the lot, prior to the issuance of the building permit, the applicant was required to produce a design and detailed drawings by a licensed P.E. engineer. The issuance of a Certificate of Occupancy was conditioned upon submittal of as-built drawings as certified by an engineer proving that the driveway and water/sewer utilities had been built in accordance with the approved engineered plan.

The approved engineered plan met the requirements of §130-68.I that the slope of the driveway shall not be greater than 10% and shall not exceed 2% within 25' of the intersecting public highway.

The as-built drawings show that the slope of the driveway is not in conformance with the approved engineered plans. There has been no amendment submittal from a licensed P.E., nor any discussion with the Town from a P.E. during construction. Therefore, the Code Enforcement Officer has denied a Certificate of Occupancy.

The slope of the driveway as constructed is 18.3% where 10% is required. Therefore, the applicant seeks relief of additional slope of 8.3%.

The cross slope on the driveway along the southwest edge is 2.69%, and the slope of the driveway within the 25 ft of the road is 4.6% where 2% is required. Therefore, the applicant is seeking relief of 2.6%.

Jody Allen recused herself from the proceedings for the Brian Harris application due to a conflict of interest and left the meeting.

The application was presented by Brian Harris at 7:45PM. Mr. Harris questioned the statement that the driveway slope was 4.6%, since it was really 2.69%. Town Manager Rita McCarthy stated that the 2.69% referred to the cross slope, and that the slope was 4.6%. Mr. Harris asked where the data came from. He was shown the email that was sent from his engineer to him containing those statements.

Mr. Harris noted that most neighboring driveways have slopes greater than 10% and he provided several photos.

Mr. Harris questioned why the law had changed from the time the other driveways had been built.

--- Member Susan Fontaine noted that a change in the law was due to safety concerns.

Acting Chairman Ruth McCarthy asked Mr. Harris why he had not constructed the driveway to conform to the plans which he had submitted to the Board.

--- Mr. Harris indicated that the decision to alter the plan was based on comments from Dan Rose indicating the best location to build the driveway was in the direction of a particular tree.

Acting Chairman Ruth McCarthy asked Mr. Harris why he did not go back to his engineer to amend the plans.

--- Mr. Harris indicated that Dan Rose was on site and he assumed that Mr. Rose had the authority to make design changes. He noted that his engineer had designed the driveway from a desk, without adequate knowledge of the topography.

Acting Chairman Ruth McCarthy noted that Dan Rose only has authority within the Town ROW, and that Mr. Rose has stated that he did not direct the applicant. He told the applicant and his contractor to consult with the engineer who prepared the plans, and that he, Dan Rose, could not override the Zoning Board.

Acting Chairman McCarthy asked who signed off on the changes to the drawings and the changes the contractor made.

Mr. Harris was asked where he intended to park during the winter, in the event he was unable to park in his driveway.

--- Mr. Harris indicated that he has had no problems parking in the past.

Acting Chairman Ruth McCarthy noted that it appears in the as-built drawing that the driveway crosses the sanitary line.

--- Looking at the drawing which had been submitted as the as-built drawing, Mr. Harris noted that while it appears that the driveway crosses the sanitary line, he is certain that it does not and the referenced drawing is not the correct drawing. He claims that he provided the Code Enforcement Officer with another drawing, either by hand or by email, which clearly demonstrates that the driveway does not cross the sanitary line.

Mr. Harris was asked if he was planning to pave the driveway,

--- Mr. Harris indicated that he was planning to have a concrete paved, heated driveway.

Mr. Harris stated that he was caught by surprise that he needed as-built drawings of his driveway. He asked Code Enforcement Officer Doug Wicks if as-builts were necessary and was told that no one else ever submitted as-builts.

Town Manager Rita McCarthy stated that when a subdivision plan is submitted, engineered drawings are included which prove every driveway can meet the Town specifications. She cited the most recent submittal for the Woodcrest Drive subdivision.

Mr. Harris stated that those were new subdivisions and that he was part of an old subdivision.

Member Susan Fontaine pointed out that the regulations were changed because of safety concerns, and that Mr. Harris' project was new construction, and like all new construction, had to meet the current regulations.

Mr. Harris reiterated that this caught him off guard.

Rita McCarthy stated that she had to take exception to Mr. Harris' statement. She stated that she had told Mr. Harris before he started that the lot he wanted to build on, the former Griffin lot, had failed to sell several times because of the challenges for water, sewer, drainage and driveway; that she told Mr. Harris from the beginning he had to have engineered drawings for construction, and that in order to get a Certificate of Occupancy, he would have to provide, certified stamped drawings from a licensed engineer showing that it was built as designed.

There was no further comment from Mr. Harris.

The Board determined that more information was needed before a decision could be made. Since Mr. Harris questioned the as-builts that were presented, the Board required the correct as-built drawing; photos of the driveway including where it intersects with the road and looking at it from Greenridge Drive, and a statement from his contractor as to how the soil conditions prevented him from building according to the engineered plan.

**MOTION TO TABLE APPLICATION 2014-06.**

**MOVED BY: RUTH FISHER McCARTHY      SECONDED BY: JAY McKENDRICK**  
**DISPOSITION: 4-0**

**Meeting was adjourned by unanimous consent at 9:00PM.**