

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

August 26, 2014

Present: Chairman Frank Thiel, Kris West, Ruth Fisher McCarthy, Jay McKendrick
Absent: Jody Allen, Susan Fontaine

Guests: Brian Harris, Dan Rose, Rita Griffen-Shroyer, Jim Howitt, Matt Dann, Kris Harrington, Diana Harrington, Jeff Evans, Rita McCarthy, Barb Lucas

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 regularly scheduled meeting.

Minutes of the February 25, 2014 meeting were approved by unanimous consent.

Minutes of the July 22, 2014 meeting have not been adopted due to a lack of quorum.

1. 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.

THE APPLICATION WAS TABLED AT THE JULY 22, 2014 MEETING.

The board determined that to make a decision, they require documentation of the actual property boundary and Town right-of-way, and a statement from Highway Superintendent Dan Rose.

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 August 17, 2014, and in The Leader.

The Harringtons presented the application at 7:05PM. The Harringtons noted that they have four cars and would like to widen the driveway to 36 feet to allow parking of two cars in an existing carport and two additional cars in the front of the house. A survey map of the property was provided.

Chairman Thiel questioned whether the Harringtons had considered driving through the carport and parking in the back yard.

Mr. Harrington noted that the location of the septic system and a pool makes parking in the rear undesirable. It would also make his brand new carport useless if no cars can be parked there. He would like to reduce the need to constantly shuffle vehicles to allow for entry and exit.

Chairman Thiel noted that law requires that the Board look for the minimum variance, and if all cars can be parked in the rear, then the variance would be zero.

The question of parking on the street was raised, and it was determined that while Highway Superintendent Dan Rose does not have the authority to prevent street parking, it would be desirable to keep cars off the road in the winter due to plowing.

The idea of planting a row of shrubs in place of a grass strip along the street to screen the pavement from view and prevent access to the proposed parking area over the grass was suggested. It was determined that the suggested hedge would be in the Town right-of-way and would create a liability for the Town.

The Harringtons requested an interpretation of what is meant by “no parking in the front yard”.

Chairman Thiel interpreted it to mean “no permanent parking space” in the front yard. Rita McCarthy noted that the intent of the rule is to maintain the appearance of the front yard as a yard instead of a parking lot.

The Harringtons noted that many of his neighbors disregard the zoning laws regarding parking in the front yard and the width of the driveway and he feels that something should be done to make everyone follow the rules. He was told that disregarding the law is an enforcement issue and should be directed to the code enforcement officer rather than the Zoning Board of Appeals.

Chairmen Thiel opened the public hearing at 7:25PM.

Communications (attached) from the following neighbors were read into the record:

Sandy and Gorden VanWormer, 25 Crescent Drive, Painted Post, NY

Rita Griffen-Shroyer, 5 and 14 Crescent Drive, Painted Post, NY

Crista Tong, 13 Crescent Drive, Painted Post, NY

All members from the public wishing to be heard, Chairman Thiel closed the hearing at 7:28PM.

The Zoning Board of Appeals 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:

A majority of the Board finds that the requested variance will produce an undesirable change in the character of the neighborhood. It will set a precedent. There are a number of homes in the neighborhood with double wide driveways, and to allow this great an increase is beyond what is typical and is undesirable. One Board member abstained on this issue.

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

The Board split 2-2 as to whether the requested variance will create a detriment to nearby properties. Since the proposed parking would be within the Town Right of Way, it would be a detriment to the Town.

- (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 split 2-2 as to whether there was another feasible method available. Two Board members found that the applicant could not achieve the benefit they wanted, i.e. to not move or shuttle cars around to get the car they wanted out. Two Board members found that the applicant had feasible alternatives such as using the rear of the property or only minor shuttling of cars.

- (2). The requested area variance is not substantial.

The Board unanimously agreed that the variance was substantial. Three sections of code would have to be varied to allow what the applicant sought. One code requirement is that the parking shall not be outside the buildable portion of the front yard, and the variance would place more than 50% outside the building envelope.

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

A majority of the Board finds that the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. One Board member found an issue with sight distance and safety.

(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 alleged difficulty was self-created.

RESOLUTION TO APPROVE APPLICATION 2014-05 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 BASED ON THE FINDINGS OF THE BOARD.

MOVED BY: JAY MCKENDRICK SECONDED BY: RUTH FISHER MCCARTHY

DISPOSITION: 2-2

MOTION FAILED FOR A LACK OF MAJORITY VOTE IN FAVOR.

The Harringtons asked what their next course of action would be and were told that they could appeal the decision within 30 days under Article 78. Another option would be to lessen the degree of the proposed variance and return to the Zoning Board of Appeals.

2. 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 SEQR 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%.

THE APPLICATION WAS TABLED AT THE JULY 22, 2014 MEETING.

The Board determined that more information was needed before a decision could be made. The Board requested a copy of the correct version of the 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 explaining how the soil conditions prevented building according to the engineered plan.

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 August 17, 2014, and in The Leader.

Jeff Evans of the Welch & Zink law firm presented the application to the Zoning Board of Appeals. Copies of the stamped, as-built drawing were presented.

Mr. Evans began the presentation by addressing why the driveway was not built according to the original plan. It was explained that as work progressed removing trees, it became evident that problems existed with the original design. Mr. Evans indicated that the original engineered drawing was created at a desk off site without adequate knowledge of existing conditions, and it became necessary to modify the design when the topography was uncovered. If built to the original design, the existing storm water ditch would be partially filled, creating a potential drainage problem. Also, if built to the original design, a 6 ft retaining wall would be necessary which was not indicated on the design. The wall would create a safety hazard where an automobile sliding down the driveway in winter conditions would slide over it. Attorney Evans explained that the driveway was built to correct for those problems. The new plan provided additional space for a vehicle to land if it were to slide down the steep portion of the driveway. The new plan also provided additional room to stop a vehicle at the base of the driveway by reducing the slope for the last fifty feet to 3.8 and the last 25 feet to 2.5 or less.

Attorney Evans noted that two issues should be addressed with any variance, the impact on the property owner and the impact on the neighborhood. In his opinion, weighing the alternative designs, he felt the driveway was built to the better design.

Member McCarthy noted that it is clear in the new drawing provided that the driveway does not cross the sanitary sewer line, which had been a concern of the Board.

Member McCarthy asked if Mr. Harris could provide the requested contractor statement explaining the conditions preventing construction according to the original engineered plan.

Attorney Evans indicated that the statement exists, but that it contradicted other statements and he would prefer not to submit it because it would be counterproductive.

Noting that the Board had no desire to debate who said what to whom, Member McCarthy indicated that she would like to hear an opinion from an engineer regarding conditions and alternatives.

Highway Superintendent Dan Rose was in attendance and was asked for a statement regarding his relation to the construction project. Mr. Rose stated that his only recommendation to Mr. Harris was to go back to his engineer for a consultation.

Attorney Evans summarized the state of the project by noting that the Zoning Board and Mr. Harris would be in the exact same positions, with Mr. Harris seeking a variance with a new drawing, had Mr. Harris gone back to his engineer prior to completing construction. Member McCarthy agreed with Attorney Evans, but noted that Mr. Harris would have had permission if he had followed the correct procedures. Attorney Evans reiterated that there was a misunderstanding about the correct procedure and Mr. Harris had never intended to bypass the Zoning Board's authority. He also noted that it would probably not be a good idea to set the precedent that a misunderstanding would automatically result in denial of a variance.

Attorney Evans presented the Board with the statement below from Chief Peter Bierwiler of the Forest View Gang Mills Fire Department regarding access to the property, given the current slopes of the driveway, in the event of an emergency:

From: Peter Bierwiler [<mailto:pbierwiler@ganfmlsfire.org>]
Sent: Monday, August 25, 2014 12:32 PM
To: Brian Harris
Cc: Doug Wicks
Subject: 32 Hemlock Lane

Mr. Harris

I have visited the home at 32 Hemlock Lane in the Town of Erwin and it is my opinion that with the driveway being properly maintained that my Fire Department will be able to adequately protect the structure if an emergency arises.

Please be advised that this decision does not pertain to any code requirements that exist in the town.

Please let me know if you have any questions.

Thanks

*Chief Peter Bierwiler / Forest View Gang Mills Fire Department / 3 Jay E Allen Drive, Painted Post NY
14870 / 607.973.0548 cell / 607.962.8711 station / 607.962.8799 fax*

Mr. Harris was asked whether the original plan indicated a retaining wall. It was noted that no wall was shown on the original design which he considered an indication that the design had problems. In his opinion, standing on location, it was obvious the plan should have included a retaining wall and should have called for a 60 foot drainage pipe where a 40 foot pipe was shown in the drawing.

Member West stated that she would like an engineering explanation of how the current design adequately addresses the intent of the law such that runoff, safety, and erosion are all addressed. A cost benefit analysis of the various options available that address all concerns of the Town would help to advance proceedings to the point where a variance could be considered.

Attorney Evans questioned what the Board requires in terms of the slope of the driveway. Chairman Thiel noted that the code requires a maximum slope of 10. Member West noted that the Board exists to uphold whatever the code says, yet grant exceptions by way of variances, when unique situations require interpretation of the code. Chairman Thiel noted that any variance must still address the intent of the law.

Chairman Thiel noted that more information was needed before a decision could be made. The Board would like information from an engineer regarding slope, cut and fill, sensible alternatives and cost of modifications. The Board also requests a drawing with the construction as-built shown as an overlay on the original engineered drawing. The Board also wishes to have a discussion with the engineer as to how the current driveway as constructed addresses the original design issues of slope, prevention of soil erosion, and flooding.

Chairman Thiel opened a public hearing at 8:17PM.

Mathew Dann, South Oakwood Drive, Painted Post, spoke on behalf of Mr. Harris. He noted that, as a real estate developer, he has researched setback issues and driveway slopes and determined that a large percentage of houses in the town cannot meet setback requirements as required by the code and the slopes required in the code are unrealistic in some situations. In his opinion, the cost of the driveway would exceed the cost of the house if it were built to code. He feels that the intent of the law is good, but unrealistic, and should be changed.

The public hearing was closed at 8:20PM.

MOTION TO TABLE APPLICATION 2014-06 UNTIL THE REQUESTED INFORMATION IS AVAILABLE. THE BOARD MUST PUBLISH A LEGAL NOTICE 5 DAYS IN ADVANCE OF ANY MEETING DATE.

**MOVED BY: FRANK THIEL SECONDED BY: RUTH FISHER McCARTHY
DISPOSITION: 4-0**

MOTION TO ADJOURN MEETING.

**MOVED BY: KRIS WEST SECONDED BY: RUTH FISHER McCARTHY
DISPOSITION: 4-0**

Meeting was adjourned at 8:25PM.