

TOWN OF ERWIN

Zoning Board of Appeals

MINUTES 09/22/15 MEETING

PRESENT: Chairman Frank Thiel, Ruth Fisher McCarthy, Jay McKendrick, Angela Narasimhan, Kris West
ABSENT: Bridget Ackerman
GUESTS: Jennifer Rice, Brian Jones, Dave Dutcher, Derek Duell, William Duell, Rita McCarthy, Barbara Lucas

CALL TO ORDER:

At 7:00 PM, Chairman Thiel called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY 14870.

MINUTES:

Minutes of the 7/28/15 meeting were not available for review.

2015-06

Request from Forest View Gang Mills Fire District for an Area Variance at 125 Forest Drive to allow a sign 8 ft by 11 ft, where 4 ft by 4 ft is allowed. Variance of §130-81.B.3.d, and Table 130-81-1 is requested. With Public Hearing.

Notification of this action was sent to **58** adjacent property owners. A legal notice of this action will print in the Town's official newspaper, the Star Gazette on September 13, 2015, and in The Leader.

The sign variance 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 Zone.

The applicant seeks to establish and LED sign which is 8 ft high and 11 ft wide. Per Table 130-81-1 Schedule of Signs, the maximum sign allowed in a residential district is 4 ft high by 4 ft wide.

Therefore, the applicant is seeking relief of an additional 4 ft in height and 7 ft in width.

The submittal does not indicate if the LED is a mobile message, nor its intensity. Section 130-81.B.11 states:

illumination of signs shall not be intermittent/flashing or of varying intensity and may not produce glare beyond the limits of the property lines.

2015-06 (continued)

In 2005, when considering the Victory Highway Wesleyan Church sign, located in a Multi-Use District on State route 415, the Board allowed a 5' high by 12' wide where 8' high by 4' wide was allowed, and imposed the following conditions:

Required conditions to mitigate the effect of the variance -- There will be no flashing, blinking or scrolling (i.e. traveling or rolling) aspect to the sign. The message will change no more frequently than every 30 minutes. The sign will be no higher than 5 feet.

The application was presented by Brian Jones, Chairman of the Fire District Board of Commissioners. Mr. Jones noted that the Fire District would like to replace the existing 4' x 8' sign with an 8' x 11', 2-sided, LED sign. The sign would be used as a tool for recruitment as well as a means for relaying general messages and information about activities. The design of the sign presented includes two mailboxes, one for the fire department and one for the fire district, built into the base. The size of the sign, excluding the base, is 3' x 5'7", similar to other fire departments in the area. The overall size of the sign and base is open to change.

Responding to a question about why the base of the sign is so large, Mr. Jones said that in order to keep the design incorporating two mailboxes symmetrical, the base would have to be 10 – 11' long.

Responding to a question about why the overall height is 8', Mr. Jones noted that the 3-4' high base was designed to keep the actual sign above the height of snow and salt from the pavement.

Member West asked why the mailboxes are incorporated into the base, where the current mailboxes are located and whether the mailboxes could be separated from the sign. Mr. Jones noted that there are currently no mailboxes and incorporating the mailboxes in the base was for aesthetics.

Chairman Thiel noted that by separating the mailboxes into a separate structure(s) and limiting the base of the sign to the width of the sign, a less significant variance would be required.

Member McKendrick asked about the placement of the sign. Mr. Jones noted that the sign would be located 25' to 35' from the centerline of the road. It would be in the center of the parking lot located in the front of the building.

Member West asked whether there were options for smaller signs and Mr. Jones noted that the sign topper could be eliminated.

CHAIRMAN THIEL OPENED THE PUBLIC HEARING AT 7:16 PM.

Jennifer Rice of 1 Jacob Drive

Expressed concern about the placement of the sign and whether it would interfere with the line of sight for drivers. In response, it was determined that the 25' setback eliminated any interference with the line of sight.

CHAIRMAN THIEL CLOSED THE PUBLIC HEARING AT 7:17 P M.

After a brief discussion, it was determined that there were too many variables in the design of the sign to be able to discuss the Zoning Board criteria. It was decided to table the discussion until the October 27, 2015 meeting, allowing the Fire District to finalize the design to present.

Chairman Thiel noted that two neighboring properties have compliant signs and it was suggested that the final design presented should be as close to compliant as possible while still meeting the requirements of the Fire District. The overall width could be reduced by separating the mailboxes to a separate structure and reducing the width of the base to the width of the LED sign. The height of the base should be reduced to the minimum necessary to prevent damage to the LED sign by snow and salt. Scrolling and/or flashing features of LED signs are not permitted.

MOTION TO TABLE VARIANCE REQUEST 2015-06 FROM FOREST VIEW GANG MILLS FIRE DISTRICT UNTIL OCTOBER 27, 2015 MEETING.

MOVED: RUTH FISHER McCARTHY

SECONDED: KRIS WEST

VOTE: 5-0

2015-07

Request from William Duell for an Area Variance at Lot #8 Morningstar Trail to allow a front yard setback of 60 ft where 75 ft is required. 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 will print in the Town's official newspaper, the Star Gazette on September 13, 2015, and in The Leader.

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

The property is located in an RD Rural District Zone.

The applicant seeks to build a house on a lot on the curve of the road where a portion of the garage would be 60 ft from the front property line. Per §130-14 and Appendix B Density Control Schedule a 75 ft front yard setback is required.

Therefore the applicant is seeking 15 ft relief.

Derek Duell and his contractor/father, William Duell presented the application. They noted that the topography of the property limits the buildable portion. There is a very steep portion, sloping down to the north, in the area behind the proposed house and garage.

Various approaches to fit the house with attached garage on the property had been considered. Locating the building with a setback from the back of the property was not acceptable to the neighbors in the back. The neighbors did not want to see any buildings there or have the bushes disturbed.

Member West asked if the structure could be angled on the property. It was noted that shifting the angle would result in moving the structure 15 feet downhill.

Mr. Duell noted that there had been opposition to the requested variance by some neighbors. After meeting with those neighbors and explaining the details of the request, there is no longer opposition. The following six opinions from neighbors were presented to the Board:

Jim and Sue Schuppert

Derek,

As residents of Morningstar Trail, Sue and I do not have any problem with a variance being granted.

Donald and Deborah Lauper of 2419 Morningstar Trail

To Whom it May Concern:

This letter is to confirm that we have no objection to the construction variance being requested by Derek Duell/Pennwood Construction pertaining to the new home being built on Morningstar Trail.

Matthew Riel

I am unable to attend the public hearing this evening to review the subject variance request but I would like to voice my opinion in support of the request. I appreciate receiving the letter (attached) inviting comments on the matter and your willingness to forward these comments and my support of the variance request to the Zoning Board of Appeals.

I met with Mr. Derek Duell on 9/20/15 to briefly discuss the variance request and received from Mr. Derek Duell on 9/21/15 a survey map of the lot that shows (attached);

- the town's road easement,
- the location of the road within that easement,
- the proposed location of the home to be built on the lot,
- the ordinance minimum setbacks and
- the proposed setback distances from the actual road location to the closest points of the home in its proposed location.

Based on my understandings of:

- the road easement is 50 feet wide,
- the ordinance minimum setback from the town road at the front of a lot is 75 feet,
- the existing road is approximately 20 feet wide and is located largely to the east side of the easement leaving approximately 30 feet of the road easement undeveloped at the front of the lot,
- the closest point of the home in its current proposed location to the road's edge being approximately 83 feet;

it seems like the variance request is for a setback of approximately 22 feet less than the minimum of 75 feet from the edge of the town's road easement.

I also understand that the topography of the lot and the size of the home desired to be built for the applicant's client are such that it would be difficult and expensive to modify in order to comply with the minimum setback requirement without receiving the requested variance.

I believe;

1. If the variance request is granted, it would not produce an undesirable change to the character of the neighborhood,
2. Although there may be ways to comply without the variance, doing so would not be justified given the cost and impact to the land or proposed home given the relatively minor benefit of strict compliance without granting the variance,
3. If the variance request is granted, the variance is not substantial given the setback to the closest point of the proposed home location from the current road position is approximately 83 feet,
4. If the variance request is granted, the variance would not have an adverse effect on the physical or environmental conditions in the neighborhood,
5. The alleged difficulty was not self-created by the applicant but rather caused by the existing natural topography of the lot combined with the size and shape of the desired home to be built for the applicant's client.

For these reasons, I am in support of the Zoning Board of Appeals granting the requested variance.

If you or the board have any questions, feel free to contact me at my day time work phone number of 570 213-7364.

Sincerely,



Matthew Riel
Resident at 2442 Morningstar Trail

Dr. T.J. Kicenski of 2362 Stonegate Trail

Town of Erwin,

I have reviewed this drawing and approve of Derek's request for a variance.

Greg Smith of 2457 Morningstar Trail

Derek,

Per your request, I will summarize our review of the project on Lot #8 Morningstar Trail.

Your drawings indicate that the far right corner of the garage of the new dwelling will extend beyond the 75 foot minimum setback from the Right of Way of Morningstar Trail. However you indicated that the road itself is located toward the southern extreme of the Right of Way for Morningstar Trail, therefore the actual distance from the corner of the proposed structure to the physical road, Morningstar Trail itself, will be 83 feet or more. Given these facts, we have no issue with the proposed variation to the setback.

Thank you for taking the time to explain the details.

Kim Cates of 2396 Morningstar Trail

Town of Erwin,

I have reviewed this drawing at site location with Derek Duell and approve of Derek's request for a variance on 9/21/15 at 5:10 pm. I would like to revoke my signature on the petition I previously signed for Greg Smith.

Member West questioned why the concrete foundation had been started. Mr. Duell responded that due to daily penalties, he started pouring the foundation for the house, which fall within the setback, but not the garage.

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.

All members agreed that the variance would not produce an undesirable change. It was also noted that by not granting a variance the option of building a detached garage closer to the road would be an undesirable change in character

(2) THE REQUESTED VARIANCE WILL NOT CREATE A DETRIMENT TO NEARBY PROPERTIES.

All members agreed that the variance will not create a detriment.

(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.

Four members agreed that due to the unique conditions, there are no feasible alternatives. One member felt that a detached garage, while undesirable in other aspects, is a feasible alternative.

(4) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL.

Four members agreed that the requested variance is not substantial while one member considers 20% substantial.

(5) THE VARIANCE WILL NOT HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT.

All members agreed that there would be no adverse effects since the lot is large and drains toward a wooded area.

(6) THE ALLEGED DIFFICULTY WAS NOT SELF-CREATED. (THIS CONSIDERATION SHALL BE RELEVANT BUT SHALL NOT NECESSARILY PRECLUDE THE GRANT OF THE AREA VARIANCE)

All members agreed that the difficulty was self-created. The size of house and garage to be built are determined by the applicant.

MOTION TO APPROVE VARIANCE REQUEST 2015-07 FROM WILLIAM DUELL ALLOWING FOR A FRONT YARD SETBACK OF 60 FT WHERE 75 FT IS REQUIRED.

MOVED: KRIS WEST

SECONDED: ANGELA NARASIMHAN

VOTE: 5-0

THE MEETING WAS ADJOURNED BY UNANIMOUS CONSENT.