

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

**September 23, 2014**

**Present:** Chairman Frank Thiel, Kris West, Ruth Fisher McCarthy, Jay McKendrick, Jody Allen (not available for Case 2014-06)

**Absent:** Susan Fontaine

**Guests:** Wayne Kennedy, Jody Allen, Al Stage, Tom Dobrydney, Brian Harris, Jeff Evans, Tim Steed, Ron Panosian, Maria E Marzo, 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 July 22, 2014 meeting have not been adopted due to a lack of quorum.

Minutes of the August 26, 2014 meeting were approved by unanimous consent.

**1. 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%.

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**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.

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**THE APPLICATION WAS TABLED AT THE AUGUST 26, 2014 MEETING.**

The Board determined that more information was needed before a decision could be made. The Board requested a discussion with an engineer regarding slope, cut and fill, erosion, flooding, sensible alternatives and cost of modifications. The Board also requested a drawing with construction as-built shown as an overlay on the original engineered drawing.

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 September 14, 2014, and in The Leader.

Prior to presentation of application 2014-06, Chairman Thiel offered a brief history. It was noted that the application was initially submitted in response to the denial of a Certificate of Occupancy. The variance was tabled at the July 22 Board meeting due to a lack of information necessary to make a decision. The variance was tabled again at the August 26 Board meeting with a request for additional information and input from an engineer. The Board consented to a special session of the Zoning Board at the request of the applicant which did not take place.

Application 2014-06 was introduced by Jeff Evans, attorney for the applicant. Brian Harris was in attendance.

Attorney Evans noted that they were not available for the special session requested because they went above and beyond what was requested by the Board in gathering information. A compromise was proposed between the existing state of the driveway and the original engineered design which would accomplish what the code was designed to address regarding safety, storm water management and soil erosion.

Tim Steed, of Hunt Engineering, presented the latest version of the application. A new drawing was submitted depicting the original design (purple), the as-built design (red) and the proposed compromise design. He noted that observation of traffic at the site resulted in a count of 4 vehicles and 1 bus for the period from 7:00AM – 9:00AM, which indicates very low traffic. It was also observed that, given the general topography at the base of the driveway, a car would collide with a bank of bushes under sliding conditions. The proposed compromise calls for a slight realignment and grading of the driveway. The upper portion of the driveway would be 5.5% grade. The middle portion would be graded to a uniform 12.5% and the bottom portion already meets code requirements. Further grading to achieve the code maximum of 10% would be undesirable due to limitations by slopes and drainage patterns and would result in significant disruption of the site.

Chairman Thiel asked Engineer Steed whether the driveway could have been built to the original, approved design. Noting that while the driveway could have been built as-designed, he thought the contractor may have been concerned with stability in the original design due to the significant amount of cut and fill required.

When looking for a solution which would come as close as possible to the 10% desired code maximum, engineer Steed said he started the new design from existing conditions, with a site which had already undergone significant disruption. He indicated that the difference between the 10% maximum slope in the code and the 12.5% slope in the new design would be very small from both aesthetic and safety standpoints. Chairman Thiel noted that the 12.5% grade was known to be acceptable to the Highway Superintendent.

Engineer Steed noted that one concern with the driveway was the drainage, with the potential for a large amount of water coming down the hill quickly. One solution would be to intercept most of the water with a second culvert located higher up the driveway, thereby removing the hydraulic load from the Town right-of-way.

Cost estimates were provided for the various plans. The cost to regrade and align the driveway to meet the 12.5% grade option would be \$2400. The cost to regrade and align the driveway to the original design would be \$9100. The cost of the second culvert was not included in the estimates. Brian Harris noted that he had already modified the driveway twice, at a cost of between \$5000 and \$6000 to extend the landing to 35' and regrade the lower 50' to less than 4%.

Attorney Evans addressed a concern of the Board that their authority was ignored during construction of the driveway. He noted that there was a genuine misunderstanding and that the contractors proceeded believing that the Highway Superintendent, who was on site on several occasions, had the authority. Statements from the contractors were submitted.

Brian Harris addressed the Board noting that he felt his character had been questioned. He wanted the Board to know that he had not intentionally ignored the Zoning Board's authority and that he proceeded believing he had the authority. He also noted that there were no cost savings, only safety concerns, in changing from the original design.

**Chairman Thiel opened the public hearing at 7:35PM.**

**No comment from the public, Chairmen Thiel closed the public hearing at 7:35PM.**

**The Zoning Board considers the Area Variance application 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 (4-0) that the variance will not produce an undesirable change.

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

The Board finds unanimously (4-0) that the variance will not create a detriment because the bottom of the driveway has been graded to provide a safe landing pad and because the applicant will add a pipe to further address storm drainage.

(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.**

A majority of the Board (3-1) finds that there are no other feasible methods. The Board finds this is a good compromise for this site and other alternatives are too costly.

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

The Board finds unanimously (4-0) that the variance of 12.5% slope where a 10% slope is allowed, as requested in the modified plan, is not substantial. The applicant is now only seeking relief of 2.5% where the original request was for 8.3%.

(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 (4-0) that the variance will not have an adverse effect because the potential drainage problems are mitigated in the design.

(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.

**RESOLUTION TO APPROVE APPLICATION 2014-06 FOR AN AREA VARIANCE MODIFIED TO REQUEST A 12.5% SLOPE WHERE 10% SLOPE IS ALLOWED AND CONDITIONED UPON INSTALLATION OF AN ADDITIONAL DRAINAGE PIPE AS DEFINED BY THE ENGINEER.**

**MOVED BY: JAY McKENDRICK      SECONDED BY: KRIS WEST  
DISPOSITION: 4-0**

**2. REQUEST FROM BARRY TREADWELL FOR AN AREA VARIANCE AT 285 SOUTH HAMILTON ST. TO ALLOW FOR 3 WALL MOUNTED SIGNS WHERE 1 IS ALLOWED. VARIANCE OF §130-81.B.3.a, §130-81.B.3.d and Table 130-81-1 IS REQUESTED. WITH PUBLIC HEARING.**

Notification of this action was sent to 13 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on September 14, 2014, 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 B-1 Business Commercial Zone.

The applicant seeks to establish wall signs on three building facades, where 1 wall sign is permitted. One monument sign is also permitted subject to a Use and Occupancy permit from the Town. The applicant has not applied for a monument sign.

The applicant seeks relief of two additional signs.

Neither the applicant or a representative was present.

**APPLICATION 2014-07 WAS DEEMED WITHDRAWN WITHOUT PREDJUDICE.**

**3. REQUEST FROM DR. MARIA MARZO FOR AN AREA VARIANCE AT 275 SOUTH HAMILTON ST. TO ALLOW A VARIABLE FRONT YARD SETBACK OF 0-26 FT WHERE A ZERO FRONT YARD SETBACK IS REQUIRED. VARIANCE OF §130-89.D, §130-89.D.A.i AND APPENDIX B - DENSITY CONTROL SCHEDULE IS REQUESTED. WITH PUBLIC HEARING.**

Notification of this action was sent to 14 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on September 14, 2014, and in The Leader.

The application is the subject of a Planning Board action. The Planning Board has declared itself Lead Agency under the State Environmental Quality Review Act. **No SEQR action by the Zoning Board of Appeals is required.**

The property is located in B-1 Business Commercial Zone.

Section 130-89 Design Standards for Selected Districts establishes a zero front yard setback for businesses in the B-1 Commercial District. The applicant's property line 68.24 feet from the former alignment of S. Hamilton Street. The former roadway is now an access easement to the adjacent property. The former roadway is another 25 feet from the Right of Way (ROW) to the current S. Hamilton Street. Therefore, the applicant's property line is 93.24 feet from the current road ROW at its closest distance. The current road is curved, while the property line is straight horizontal. The distance of the property line to the current road ROW varies from 93.24 feet to 180 feet.

The applicant seeks to build a new structure angled to mirror the curvature of the current road as compared to the property line. This would create a front yard setback that varies from 0 to 26 feet.

The applicant seeks relief of 0 to 26 ft.

Tom Dobrydney of Fagan Engineers presented the application. Dr. Maria Marzo was present.

Engineer Dobrydney explained that the applicant would like to orient the front face of the building parallel with Hamilton Street however, due to the unique situation, the front property line does not actually abut the road and is not parallel to the road. There exists a non-rectilinear strip of land under the control of the Town of Erwin, a 30' wide access easement owned by Frant Corp, and a utility easement for overhead wires intervening. Code requires a zero front yard setback, therefore a variance is needed to angle the setback from the property line in order to have the building align parallel to the road.

It was noted that the code did not anticipate such a situation and granting a variance would not be setting a precedent because the circumstances are unique.

Chairman Thiel noted that if angled from the property line, one corner of the building would be behind the line of sight of the proposed Liquor Factory building. Dr. Marzo said that she would prefer the front of the building to face Hamilton Street in preference to preserving the minor line of sight issue.

Engineer Dobrydney noted that the utility easement would require moving the building back from the property line in addition to angling it from the property line to make it parallel with Hamilton Street. The utility easement could be achieved on the given plan by sliding the building back with no change to the proposed parking and coverage. It was noted that the neighboring Liquor Factory would also have to accommodate the utility easement and would be set back from the property line.

Member Kris West, noting that the intent of the code was to disallow parking in the front of buildings, asked that any variance include the condition that parking would never be allowed in front of the building.

Engineer Dobrydney indicated that the status of the Frant Corp easement is uncertain because it was never filed. The possible purchase of the strip of land or an easement is being investigated.

**Chairman Thiel opened the public hearing at 8:08PM.**

**No comment from the public, Chairmen Thiel closed the public hearing at 8:08PM.**

**The Zoning Board considers the Area Variance application and makes findings on each of the Area Variance Criteria:  
(Note that Member Jody Allen is now included.)**

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

The Board finds unanimously (5-0) that the variance will not produce an undesirable change as long as there is no parking in the front.

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

The Board finds unanimously (5-0) that the variance will not create a detriment. This is a unique parcel and it is being dealt with in a unique way to meet the vision of the Comprehensive Plan.

- (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 (5-0) that there is no other feasible method available and many alternatives were considered.

- (4). **The requested variance is not substantial.**

A majority of the Board (3-2) finds that the requested variance is not substantial. Two members feel that the request is substantial, but mitigated.

- (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 (5-0) that the variance will not have an adverse effect.

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

A majority of the Board (4-1) finds that the difficulty was self-created. One member feels that the difficulty was created by the unique conditions.

**RESOLUTION TO APPROVE APPLICATION 2014-09 TO ALLOW FOR A VARIABLE FRONT YARD SETBACK OF 0-26' FROM THE EXISTING UTILITY RIGHT-OF-WAY OR PROPERTY LINE, WHICHEVER IS LESS, AND ON THE CONDITION THAT THERE IS NEVER TO BE ANY PARKING IN FRONT OF THE BUILDING ON THIS PARCEL.**

**MOVED BY: KRIS WEST      SECONDED BY: CHAIRMAN THIEL  
DISPOSITION: 5-0**

**4. REQUEST FROM DR. MARIA MARZO FOR AN AREA VARIANCE AT 275 SOUTH HAMILTON ST. TO ALLOW 65% LOT COVERAGE WHERE 60% MAXIMUM IS PERMITTED. VARIANCE OF §130-14 AND APPENDIX B – DENSITY CONTROL SCHEDULE IS REQUESTED. WITH PUBLIC HEARING.**

Notification of this action was sent to 14 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on September 14, 2014, and in The Leader.

The application is the subject of a Planning Board action. The Planning Board has declared itself Lead Agency under the State Environmental Quality Review Act. **No SEQR action by the Zoning Board of Appeals is required.**

The property is located in B-1 Business Commercial Zone.

The lot with the existing building is currently 73% covered. The Density Control Schedule allows 60% coverage. The applicant will be demolishing the existing structure and building new. Therefore, the applicant would have the opportunity to cure the current, pre-existing non-conforming condition.

Based on the proposed site plan design, the applicant is requesting to allow 65% coverage where 60% is permitted, seeking a 5% relief.

Tom Dobrydney, of Fagan Engineers, presented the application. Dr. Maria Marzo was present.

Engineer Dobrydney noted that the existing structure, which will be removed, has a lot coverage of 73%. Dr. Marzo originally sought coverage of 70%, however, by reorienting the building on the lot and reducing the building size from 5000 to 4200 square feet, the variance requested has been reduced to 65% coverage. It was noted that the current appearance, with 73% lot coverage, does not appear significantly different than surrounding properties.

Member Kris West asked how many parking spots would be lost in order to comply with the code maximum lot coverage of 60%. It was determined that it would be necessary to eliminate 10 parking spots, which would then be less than the number of parking spaces required for a 4200 square foot building.

Member Kris West asked if it would be possible to start with 28 parking spaces and possibly add more a later time. The number of parking spaces required with a 4200 sf building is 28 however; Dr. Marzo considers 34 spaces necessary to accommodate employees, patients, waiting patients and possible deliveries.

Rita McCarthy noted that, although not a factor in lot coverage, the intervening properties are necessarily green and provide the appearance of additional green space.

**Chairman Thiel opened the public hearing at 8:25PM.**

**No comment from the public, Chairmen Thiel closed the public hearing at 8:25PM.**

**The Zoning Board considers the Area Variance application 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 (4-1) finds that the variance will not produce an undesirable change and that the appearance would not be substantially different from neighboring properties. One member considers the change undesirable in terms of what is envisioned by the code.

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

The Board finds unanimously (5-0) that the variance will not create a detriment. It is a unique lot and the applicant has tried to mitigate and strikes a good balance between opposing factors.

**(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 (5-0) that there is no other feasible method available.

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

A majority of the Board (3-1-1) finds that the requested variance is not substantial, requesting 5% more than the 60% allowed. One member feels that 1665 square feet is substantial. One member feels it is neither substantial nor insubstantial.

**(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 (5-0) that the variance will not have an adverse effect. In fact, the drainage would be improved.

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

A majority of the Board (4-1) finds that the difficulty was self-created because of the applicant's choice of building size and perceived number of parking spaces required. One member feels that the difficulty was created by the unique conditions of the lot.

Member Kris West asked what the proposed pavement would be and whether any type of pervious surface had been considered. Although pervious pavement had not been considered for sidewalks or elsewhere, Member Jody Allen noted that pervious pavement is not considered green space and use would not affect lot coverage requirements.

Rita McCarthy noted that, although not a factor in lot coverage, the intervening properties are necessarily green and provide the appearance of additional green space.

**RESOLUTION TO APPROVE APPLICATION 2014-08 TO ALLOW FOR A 65% LOT COVERAGE WHERE 60% IS ALLOWED BASED ON THE FINDINGS OF THE BOARD.**

**MOVED BY: CHAIRMAN THIEL      SECONDED BY: RUTH FISHER McCARTHY  
DISPOSITION: 5-0**

**BY UNANIMOUS CONSENT THE MEETING WAS ADJOURNED AT 9:00PM.**