

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

August 10, 2006

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on August 10th, 2006 at 7 pm. by Chairman Jim Jameson.

Roll Call:	Jim Jameson	Present
	Bob Worden	Present
	Bob Fox	Excused
	Ronald Rubin	Present
	Glen Herbert	Present
Alternate	Jim Bird	Present
Alternate	Jim Creveling	Present

Others present included; Ray Stewart/Town Bd., John F. Phillips/CEO, Douglas Nichols, William Smith, PE, Bob Evans/ Planning Bd., Robert & Sue Belchior, Michael & Sue Robinson, Tim Maisel, Ed & Phyllis Nozell, and Vera Ward.

A motion was made by B. Worden and seconded by J. Creveling to approve the July 2006 Zoning Board minutes as written. The motion was carried unanimously (5-ayes, 0-nays).

It was noted by Chairman J. Jameson that both alternates zoning board members are present tonight as Jim Bird will be sitting in for excused member Bob Fox, and Jim Creveling will be sitting in for board member Ron Rubin as Application #873 is reviewed as Mr. Rubin is an adjacent neighbor.

COMMUNICATIONS

Yates County Planning Board – September Training Course

AREA VARIANCE/SPECIAL USE REVIEW

Application #873 for Rob Belchior owning property at Lot #14 between Rt 54A and Ayers Rd. to request an Area Variance to build a seasonal cabin on a "Flag Lot".

Mr. Belchior was present to answer questions for board members regarding the location of his building lot and the private road that he uses to access his property.

There was a neighbor present, Mr. Robinson, who has a seasonal home out near Mr. Belchior's property and it has been there for several years. He stated that earlier this spring he had need of the local Fire Department to put out a fire which had started out as a control burn. The fire department was able to get to his property from Ayers Rd. and put out the fire.

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At that time, there was a discussion with the Fire Chief regarding any issues concerning the road of access. The main issue of the fire chief was a better marking of the private road where it intersects with Ayers Rd. and a fire number listing at this road intersection for any buildings located on this private road. Other issues that were discussed were the culvert area and turn around areas which did not seem to concern the fire chief at this time.

This private ingress/egress road is 50 ft. wide and has a hard packed surface of sufficient width to accommodate emergency vehicles and other property owner vehicular traffic.

The Planning Board reviewed this application and a vote was taken (of the members present) regarding this application with the result being 3 in favor and 2 against. This vote, seemingly in favor of the area variance, was challenged by a board member. The Chairman of the Planning Board stated that he would look into this matter prior to the Zoning Board meeting. This challenge was reviewed by the Town Attorney, who stated that the challenge was correct and that in order for the vote to be positive, there had to be 4 yes and 1 no because the Planning Board (as set up by the Town Board) is a seven member board therefore a majority of the 7 members is 4. This is in accordance with General Construction Law #41. Quorum and Majority (copy of which is on file in the Zoning Office).

The area variance test questions were reviewed with a majority answer of no to questions: 1, 2, 3, & 4 and the majority answer of yes to question 5.

Mr. Belchior noted the language of his deed with regards to it being a perpetual easement/right-of-way to be used in common with others and that it goes from Ayers Road all the way down to NYS Rt 54A. He stated that he had been from Ayers Rd. all the way down to State Rt 54A with his 24 ft. motor home, and his two other family vehicles many times. Mr. Belchior stated that although his property is located well back from a Town or State maintained road, he

understands about emergency vehicles getting to his property and it would be no different than if he owned his own private driveway that was as long as the access road. He stated that he understands that the fire department is a volunteer organization and that the response time can vary, and that anyone living on these private right-of-ways must accept responsibility for the road maintenance. If the Town road is maintained to the private road, then the Town's responsibility has been met.

The Board was in unanimous agreement that this is a SEQR Type II action.

A motion was made by J.Jameson and seconded by G.Herbert to grant this area variance as requested, noting the deed reference to a 50 ft. right-of-way and that owner accepts his share of responsibility for emergency vehicle ingress and egress and that the Town is not reliable for the maintenance of this private road/right-of-way. There needs to be a sign at the intersection of Ayers Rd. and this private road marking it as a private road.

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There also needs to be a listing of fire numbers with the private road sign for any structures that have been assigned a number and are located on this private road. This will be helpful to emergency personal should there be a need for them to be called.

The motion was carried with a poll of the board as follows: B.Worden, J.Creveling-grant, J.Bird-grant, G.Herbert-grant, J.Jameson-grant.

In granting this area variance the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood or alter the essential character of this locality.

Application #874 for Douglas Nichols owning property at 3722 Rt 54A, Branchport requesting a special use permit to operate and maintain a boat storage facility in a location that is approximately 1/3 in the general business zone and the remaining 2/3rds in the Ag-Residential area.

Mr. Nichols was present to answer questions for board members. A new drawing had been distributed to Zoning Board Members just prior to the meeting which provides the changes as requested by the Planning Board as per their site plan review.

Mr. Nichols stated that he presently has a boat restoration business at this location. He stated that since the sale of two marinas in the area that boat storage facilities are in demand. He would like to build a slightly larger building than is allowed in the Agricultural-Residential zone as he could utilize the extra storage space for some of the boats and trailers that he is presently storing outside at his place of business. He stated that there will not be any work performed in this building, it will only be used for storage purposes.

Mr. Nichols provided a survey map to show the exact location of his proposed building with respect to the existing black top driveway which will be changed back to a gravel surface prior to the building being constructed. It was noted later in the meeting, that by changing this area from a black top surface back to a gravel type surface will make it more permeable for water absorption from off of the building after it is built.

The Planning Board reviewed the short EAF form and after looking at part 1 and reviewing part 2, found it to be satisfactory for a negative declaration.

The Planning Board had no concerns with the extra 20 ft. length of the building.

The Yates County Planning Board reviewed this application and determined there was no significant county-wide or inter-community impact.

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It was noted earlier that this property lies within two different zoning districts therefore the building location will meet the front yard required setback for the general business zone.

The area variance test questions were read for the portion of the application dealing with the building size. There was a majority answer of no to questions 1,2,& 4 and a majority answer of yes to questions 3 & 5.

Board members were agreeable with what Mr. Nichols wished to do at this location, but had some concerns with regards to the clean-up of the lot itself. Mr. Nichols stated that he was in full agreement that there was some definite clean-up that needed to be done, and he stated that this would be one of the first things that would be addressed.

Chairman J.Jameson had some concerns with property drainage on this lot, not only for what is existing, but what

could be added with the building addition. It was mentioned again about removing the black-top and putting it back to gravel for a more permeable surface. It was suggested, however, that it might be a good idea to have DEC and Yates County Soil and Water have a look at the site and to review the plans for the new building and make any recommendations that they might feel are necessary.

A motion was made by B.Worden and seconded by G.Herbert to grant the application as applied for and the terms of the Special Use shall include the allowance of a 120 sq. ft. boat storage building to be built for storage only; that property owner will contact DEC and YC Soil & Water to review the site and the proposed plan for any recommendations that they may feel are necessary; that the property owner shall adhere to the notes as discussed with the Planning Board and as provided on the updated and submitted site plan of (8/10/06)except that the landscape screening shall be arborvitae or other suitable shielding vegetation; that as a priority, the site will be cleaned up and any current boats, etc. that are currently outside will be stored inside where possible and practical. Junk or deteriorated items will be removed from the site. The Zoning Board members stated that this is in keeping with the updated Comprehensive Plan. The motion was carried with a poll of the board as follows: R.Rubin-grant, J.Jameson-grant, J.Bird-grant, G.Herbert-grant, B.Worden-grant.

Application #875 for Tim Maisel owning Lot "H" a parcel of land off from County House Wds. Rd. in the Windy Heights area requesting an area variance for a "Flag Lot".

Mr. Maisel was present to answer questions for board members and to explain what he wanted to do. He stated that he was in the process of having an engineer design a septic system for his property. He is looking to build a seasonal cabin on a private road. He stated that there was an informal agreement amongst the neighbors for contributing monies to keeping the private road in shape for ingress and egress and to accommodate emergency vehicle traffic.

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Some board members had difficulty in locating the property belonging to Mr. Maisel. It was noted that signage for a private road should be located out on County Hse Wds. Rd. where this private road begins. There needs to be a listing, along with the private road sign, of all structures that have been assigned a fire number and that are located on this private road/right-of-way.

The Planning Board reviewed this application and recommended passing it on to the Zoning Board (4 in favor and 1 against) with condition of property owner responsibility for emergency vehicle ingress and egress. There was also a request for property owner to show the 50' right-of-way which is in the language of Mr. Maisel's deed (Liber 368 Pg. 49).

The area variance checklist was reviewed with a majority answer of no to questions: 1,2,3, & 4 and the majority answer of yes to question 5.

Board members were in unanimous agreement that this is a SEQR Type II action.

A motion was made by J.Jameson and seconded by J.Bird to grant this area variance with the condition that the property owner accepts his share of responsibility for maintenance of this private road for emergency vehicle ingress and egress and that the Town is not liable for maintaining this road.

In granting this area variance the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood or alter the essential character of this locality.

Application #876 for Edwin and Phyllis Nozell owning property at 73 Beechnut Rd., Branchport requesting an area variance to add a 10' x 12' addition to existing home to enlarge the kitchen area. The proposed addition will be coming closer to the side yard lot line than zoning allows.

Mr. & Mrs. Nozell were present to answer questions for board members. Mrs. Nozell requested that their application be amended from the requested 9ft. by 12 ft. to 10 ft. by 12 ft. It was noted that while the house does not sit squarely on the lot but at a slight angle, the lot itself does not have true parallel side yard lot lines.

The house presently has a north side yard setback of 7.4 ft. from the side yard lot line as measured from the roof overhang.

The area variance test questions were reviewed with the majority answer of no to questions: 1,2,3, & 4 and the majority answer of yes to question 5.

Board members were in unanimous agreement that this is a SEQR Type II action.

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A motion was made by J.Bird and seconded by R.Rubin to grant this area variance application noting the amended change

to be a 10' by 12' addition and that the addition shall come no closer to the north side yard property line than 7 ft. as measured from the closest point of the structure including roof overhang, thus making this a 3 ft variance. B.Worden-grant, G.Herbert-grant, J.Bird-grant, R.Rubin-grant, J.Jameson-grant.

#### OTHER BUSINESS

CEO John F. Phillips was present to discuss with the Zoning Board a letter of request from Frank Pinkosky (who was also present) about a Zoning Board decision that was made on 11/11/2004 for an area variance request for a "Flag Lot" off from West Bluff Dr. (Area Variance #825).

Mr. Pinkosky's letter is a request to have the Zoning Board re-visit the decision for #825 which required a road maintenance agreement to be signed and in place prior to the issuance of a Certificate of Occupancy for his new home.

Mr. Pinkosky gave the Board members a brief review of what has taken place and his attempts to contact the neighbors/property owners adjacent to the private road (at least twice) first by mail and then by phone and trying to get them to sign on to a road maintenance agreement. The response from at least six of the nine people that he originally sent letters to, has been that they feel there is no need to sign an agreement such as this as they have an informal agreement as to how the private road is taken care of.

CEO Phillips stated that Mr. Pinkosky's home has been built and meets all of the NYS Building and Fire Code requirements. It is basically done, and he needs to have the C of O since it is important for insurance purposes that this be issued. Having said this, the CEO stated that he had talked briefly with John Nicolo who was supposed to have sent a letter to the Code Enforcement Officer stating that he is responsible for the road. This promised letter has not been received as of this date (8/10/06).

It was noted that a copy of Mr. Pinkosky's deed does in fact say that he has an easement to use in common all roadways and rights-of-way shown on the aforesaid filed subdivision map. Grantor, will maintain said roadways in the same condition as over the past twenty years.

The procedure of revisiting this application was discussed. A motion was made by R.Rubin and seconded by J.Jameson to re-visit the decision for Application #825 at the September Zoning Board Meeting. The Zoning Secretary will send letters to the neighbors as to the time, place and date of the September Public Hearing. The motion was carried with a poll of the board as follows: B.Worden-agree, G.Herbert-agree, R.Rubin-agree, J.Bird-agree, J.Jameson-agree.

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Mr. Pinkosky asked if it would be allowable to ask for a Temporary Certificate of Occupancy so that he would be covered and not be doing anything illegal. CEO John F. Phillips stated that this would be appropriate since, once again, the home meets all the building requirements of the NYS building and Fire Code. CEO Phillips also stated that he has a letter on file from a Branchport Fire Chief that the private road is adequate for emergency vehicle ingress and egress.

There being no further business, a motion was made by J.Jameson and seconded by J.Bird to adjourn the meeting. The motion was carried unanimously, and the meeting was adjourned at 8:50 pm.

Respectfully submitted,

Elaine Nesbit/ZAP Secretary