

**TOWN OF JERUSALEM
ZONING BOARD OF APPEALS**

April 24th, 2007

A second meeting of the Zoning Board of Appeals for the month of April was called to order on Tuesday, April 24th, 2007 at 7:10 pm by Chairman Ron Rubin.

Roll Call:	Ron Rubin	Present
	Glen Herbert	Present
	Jim Jameson	Present
	Jim Bird	Present
Alternate	Jim Creveling	Present

Others present included: Attorney Philip Bailey, CEO John F. Phillips, Attorney Thomas Warth, Douglas Bugner, Bob & Carol Worden, Susan Peck, and Annette Toaspern/Planning Bd.

A motion was made by R.Rubin and seconded by J.Bird to approve the April 12th minutes as corrected. The corrections are as follows: Page#3 at the bottom to add the following sentence: the motion made and seconded to grant application #893 is carried with a poll of the board as follows: G.Herbert-grant; R.Rubin-grant, B.Fox-grant, J.Bird-grant, J.Jameson-grant. Page #7 third paragraph last sentence to replace the word (creation)of the lots, with the word (existence) of the lots. Page #7 paragraph seven to remove the following portion of the sentence: (based on the fact that as two separate tax parcels they are paying separate tax bills).

The motion was carried unanimously (5-yes, 0-nays).

Chairman R.Rubin stated that there is only one Application composed of several parts that is to be heard tonight (Application #896 for Douglas Bugner property at 444 East Bluff Dr.) and a fee had yet to be determined. Since this application is coming about as a result of a StopWork Order and a previously denied Area Variance request, the board would set the fee for this application at \$100. This was agreeable with Mr. Bugner and his attorney and a check in that amount will be sent to the Town of Jerusalem.

Chairman R.Rubin suggested that this application #896 for Douglas Bugner owning property at 443-444 East Bluff Dr. be reviewed as per the submitted application by Mr. Bugner's attorney Thomas Warth and to review each item 1-4 and that the decision of each part would stand on its own set of facts. Attorney Warth asked that Item #4 be reversed and considered before Item #3 as the decision of #4 could effect the consideration of #3.

**Zoning Board of Appeals
April 24th, 2007**

Board members discussed the status of this property asking if this is one property or two.

The question was asked if the lots will be separated out. There are two survey maps for these lots. The first survey map dated July 7, 1976 completed and filed at the Yates County Clerk's office by Mr. Newt Gowdy on Oct. 17th, 1978 shows parcel "A" and Parcel "B" with a solid separation line dividing the two lots and also shows separate area lot totals for each parcel. The second survey map completed on June 10, 1994 by Richard Willson and filed at the Yates County Clerk's office on June 21st, 1994 shows both parcels as one with one total area for the parcel. A broken line appears on the survey map indicating where the parcels originally had a solid line division on the first Gowdy survey.

Mr. Bugner's attorney is of the opinion that these are essentially two separate lots even though there is only one tax map number and one tax bill for the property. He stated that

his client has agreed to separate the two parcels to draw up two separate deeds which would be filed at the Yates County Clerk's office and this would then allow the Real Property Office to assign separate tax map numbers for each deeded parcel.

The issue of separate utilities, i.e. sewer and water to each dwelling will be reviewed and addressed by the Keuka Park Water and Sewer Department in accordance with their regulations

REVIEW of APPLICATION Items # 1- 4.

Item #1, for existing deck located along the eastern (lake) side of the house located at 443 East Bluff Dr. Existing deck is within 15 ft. lakeside front yard setback in Residential Lakeshore District and may contribute to structural lot coverage in excess of 20% standard in Residential Lakeshore District.

In the application submitted, Attorney Warth noted that the deck was installed prior to the applicant's acquisition of the property and is believed to have been installed in 1973, prior to establishment of zoning rules and setback rules.

Mr. Bugner had only verbal information regarding when the deck may have been built. Chairman R.Rubin stated that the Zoning Board's position would have to be that if no documentation could be provided as to when the deck was built it would have to be considered as under zoning review.

Attorney Bailey stated that the board might want to consider looking at the two surveys as indicated above. The 1976 survey shows the structure without decks

and the 1994 survey shows decks added.

Item #2, for existing deck located along the southern side of the house located at 444 East Bluff Dr. Existing deck is within 15 ft. lakeside front yard setback and 10 ft. sideyard setback in Residential Lakeshore District.

Zoning Board of Appeals

April 24th, 2007

Attorney Warth stated that in 2003 the Zoning Board legalized the existing decks and it is his opinion that the board, having made that decision, does not have the authority to revoke its own decision even if there was a procedural flaw. Attorney Warth submitted zoning case law with respect to this matter. He did state however, that the Items #1 & 2 were prepared to be submitted to the Zoning Board at tonight's meeting should this Zoning Board disagree with his opinion.

There was discussion between Attorney Warth, Attorney Bailey and board members as to this 2003 decision. Attorney Bailey stated that he had received the referenced case law from Attorney Warth earlier in the day but did not have time to look up nor review the court's decisions prior to this meeting tonight.

The end result of the discussion was that the Board Members could review Items #1 & 2 as though they were new cases or accept the 2003 ruling from the previous zoning board.

There was a general acknowledgement of the board members regarding these facts: that the decks that are presently in existence are there regardless of when they were built and the 2003 Zoning Board decision legalized them.

A motion was made by G.Herbert and seconded by J.Bird to decline Application #896 Items #1 & 2 but to re-affirm the granting of the area variances for the south deck on the south structure and the east deck on the north structure as per the filed 1994 survey map completed by Richard Willson on June 10th, 1994 and filed at the Yates County Clerk's Office on June 21st, 1994 under Maps MO2-161.

The motion was carried with a poll of the board as follows: R.Rubin-deny, stating they should be evaluated on the current merits, J.Creveling-grant, J.Jameson-grant, G.Herbert-grant, J.Bird-grant.

Chairman R.Rubin then moved on to the review of Item #4 as requested by Attorney Warth.

Item #4 to extend over existing deck the half-story addition to the house at 444 East Bluff Dr. that is sought under item #3. Addition of half-story over the deck would consist of approximately 168 sq. ft. of floor space, which when added to the square footage (approximately 234 sq. ft.) proposed to be placed over the frame of existing house would be an addition of 402 sq. ft. to the existing 508 sq. ft. of the first story.

Proposal would result in total square footage (approximately 910 sq. ft.) that is 91% of 1000 sq. ft. which is the 1 ½ -story minimum area standard. Area variances are same as those for the existing deck in Item #2: existing deck is within 15 ft. lakeside front yard setback and 10 ft. side yard setback in Residential Lakeshore District.

Zoning Board of Appeals April 24th, 2007

Attorney Warth asked that the board members consider the granting of this area variance for the extension over the south deck on the structure at 444 East Bluff Dr. He asked that the board members take into consideration that the deck itself would remain open and would not be increasing the original footprint.

Attorney Bailey stated that the original footprint does not include the deck. Attorney Warth agreed that it was not part of the original structure, but since the deck is there and the zoning board re-affirmed the 2003 decision to allow the decks to remain as built, that the expansion of the home is sideways and does not increase the lot coverage with regards to the area lot coverage.

There were concerns expressed from another neighbor, B. Worden, that the intent of the zoning law would not be upheld by allowing the second floor expansion to move sideways out over the deck area. His concern is for a substantial expansion to a non-conforming structure. To allow this expansion to go beyond what was originally there brings living space very close to the neighboring property line and is a very substantial change. He stated that he finds it hard to support this type of expansion not only upwards but also laterally.

Susan Peck was present and submitted pictures (copies on file with application) to board members with respect to the Bugner property and its proximity to their beachfront property. The Pecks own property adjacent to the south side of 444 East Bluff Dr. Mrs. Peck stated that from across the road where their home is located, the property at 444 East Bluff Dr. is not objectionable but on the lake side it is very close and looks down on their beachfront property.

A. Toaspern spoke with concerns for allowing the upward expansion to in any way move sideways to cover the deck. She stated that for many years the Planning Board in reviewing area variances had made recommendations that decks not be allowed to be considered as living space. There were requests to cover decks, screen them in, etc. but always the condition was added that this not be considered as living space.

It was noted that the lot coverage for this lot does not exceed the allowed 20% even with the inclusion of the deck.

The area variance checklist was reviewed with the following results: #1 (5-yes, 0-no), #2 (0-yes, 5-no), #3(5-yes, 0-no), #4(3-yes, 2-no) #5(3-yes, 2-no).

R.Rubin made a motion seconded by J.Bird to deny Application/Item #4 based on the fact that increasing the living space over an area that is something other than the original footprint is not permitted. The deck not being considered as part of the original footprint.

The motion was carried as follows: J.Jameson-deny, G.Herbert-deny, J.Bird-deny, J.Creveling-deny, R.Rubin-deny.

Zoning Board of Appeals

April 24th, 2007

Application/Item #3 for the addition of half-story to preexisting nonconforming house located at 444 East Bluff Dr. Addition of half-story consisting of approximately 234 sq. ft. of floor space on top of existing house of approximately 508 sq. ft. Present house sq. ft. is approximately 84.7% of 600 sq.ft. one-story area standard. Proposal absent extension over deck would result in total sq.ft. (approximately 74.2% of 1000 sq. ft. 1 ½ -story minimum area standard. Variance is from Zoning Code §160-56(A) prohibiting enlargement of nonconforming building unless enlargement tends to decrease the degree of nonconformance.

The area variance checklist was reviewed with the following results: #1(1-yes 4-no), #2(0-yes, 5-no), #3 (4-yes, 1-no), #4 (2-yes, 3-no), #5(5-yes, 0-no).

A motion was made by G.Herbert and seconded by J.Bird to grant application/Item #3 as applied for in the application. The overall height is not excessive and is in keeping with similar dwellings in this area. It is also noted that the additional sq. footage will help to decrease the degree of non-conformity regarding the required living space.

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

The board is in agreement that the items considered for this application are SEQR Type II actions.

In granting these area variances 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. These variances will not be injurious to the neighborhood nor alter the essential character of this locality.

Attorney Warth asked that the board address the Stop-Work Order as part of their appeal since all the other issues have now been dealt with. It is his opinion that the Zoning Board should now give direction for the Stop-Work Order to be removed.

CEO John F. Phillips stated that he was willing to lift the Stop-Work Order upon direction from the Zoning Board.

J. Jameson made a motion seconded by G.Herbert to direct the CEO to lift the Stop-Work Order consistent with the decisions previously made. The motion was carried with a poll of the board as follows: R.Rubin-grant, J.Jameson-grant, J.Bird-grant, J.Creveling-grant, G.Herbert-grant.

**Zoning Board of Appeals
April 24th, 2007**

The Stop-Work Order will be lifted as soon as the new deeds for the respective properties are drawn up and filed at the Yates County Clerk's Office.

There being no further business, a motion was made by R.Rubin and seconded by J.Creveling to adjourn the meeting. The motion was carried unanimously (5-yes, 0-nays).

The meeting was adjourned at 9:30 pm.

Respectfully submitted,

Elaine Nesbit/Secretary