

Approved

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

November 13<sup>th</sup>, 2008

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, November 13<sup>th</sup>, 2008 at 7 pm by Chairman R.Rubin.

Roll Call:	Ron Rubin	Present
	Glenn Herbert	Present
	Jim Crevelling	Present
	Jim Bird	Present
	Mike Steppe	Present
Alternate	Jack Hoffer	Present

Others present included: Gary Boardman, Attorney Peter Baker, Mr. & Mrs. Polyzoos, Mr. & Mrs. Toomey, and Mr. & Mrs. Richard Christensen.

A motion was made by R.Rubin and seconded by J.Crevelling to approve the October 2008 minutes as amended. Amendments to read as follows: Page 3 paragraph 6, first sentence to read... grant a variance of 16.3 ft. from the rear yard property line. Page 5, 1<sup>st</sup> paragraph and first sentence to read...to grant this area variance application as requested granting a 20 ft. variance from the rear yard property line.

The motion was carried unanimously (5-yes, 0-no).

COMMUNICATIONS:

There were several letters that were copied and distributed to board members prior to the board meeting (copies on file with application). Letters were received from Mr. & Mrs. Polyzoos, Mr. Toomey, Mr. & Mrs. Becker, Mrs. Joyce Netski-DeMello, all concerning application #943. There was one letter from Mr. & Mrs. Doug Marchionda regarding application #945.

NEW BUSINESS:

Application #943 Parts A&B for Doreen Inzalaco owning property at 638 East Bluff Dr. PY requesting an Area and Use Variance for a building located on the northern portion of the beach area as well as a Use Variance for the structure located on the southern portion of the beach area.

Mr. Gary Boardman and Attorney Peter Baker were present to represent Ms. Inzalaco and to answer questions for board members.

Questions were asked about the structures, particularly the south structure which was built prior to zoning and was used as a beach house with the main cottage being located a short distance north of the beach house. It was noted that the previous owner had built a new home located up near the road (East Bluff Dr.) and upon its completion had removed the cottage down on the beach leaving only the small beach house.

It was indicated by Mr. Boardman that the structure at the northern end of the beach area was probably built sometime around 2002. There is no building permit on file for this structure.

Board member G. Herbert noted that our zoning ordinance does not allow accessory buildings to be used for living or sleeping purposes, nor shall they be operated for gain.

It was also noted that a living unit includes one or more rooms with a bathroom, and kitchen designed for living or sleeping purposes. A beach house having a bathroom and shower in it and only used for changing purposes is not against the zoning code.

This was noted in remarks by Attorney Baker that when his client looked into the purchasing of this property that a question had come up about the bathroom in the beach house. When CEO Phillips researched the records at the Town Office it was noted that in fact the beach house was in its present location and could remain. It appeared that the bathroom had been in the beach house as well, and would be allowed to remain and it was indicated that it would be hooked up to the public sewer line. The use of this building, however, was to be for changing purposes, not to be used for living or sleeping purposes nor operated for gain.

Attorney Baker stated that was the reason for the application for a Use Variance for both beach structures to be used for living, sleeping purposes.

Mr. Toomey, an adjacent neighbor, stated that the property was being listed on the website of Rental Plus as having all three buildings for rent. Attorney Baker stated that his client did not start this listing, it had been set up this way from the previous owner. He stated that was the reason for the application by his client to continue this use by obtaining the use variances.

Mrs. Toomey also spoke with concerns regarding the excessive use of this property with as many as twenty-six plus people using this property at the same time. Mrs. Toomey stated that this neighborhood is residential, having single family homes. She stated that the quiet peacefulness of the area is very much disrupted by having so many people using the property at the same time.

Mr. Polyzoes read the letter (copy on file) which he and his wife had submitted to the zoning board regarding their concerns with the use of the property at 638 East Bluff Dr. Mr. & Mrs. Polyzoes own property next door to this property.

It was a consensus of the board members to sort out the issues for each beach structure and to deal with them separately.

Chairman R.Rubin stated that they would deal first with the structure at the north end of the beach. There were no papers found at the Town Offices for this building. It was built without a building permit and does not meet the front yard setback from the high water mark. There is also a question about the structure being over 15 ft. high which is not allowed for an accessory building in the R1 zone. The last issue to be dealt with is the use of the building being operated for sleeping purposes and for gain.

The area variance test questions were reviewed for the structure at the north end of the beach. The results are as follows: #1(5-yes, 0-no); #2(1-yes, 4-no); #3(5-yes, 0-no); #4(5-yes, 0-no); #5(5-yes, 0-no).

R.Rubin made a motion to deny the area variance application for this structure because of the close proximity of this building to the high water mark and the 12 ft. front yard variance being excessive as well as the height being greater than 15 ft. Also noted was the negative impact of this building based on the answers to the area variance test questions. The motion was seconded by J.Bird and carried with a poll of the board as follows: J.Crevelling-deny, G.Herbert-deny, M.Steppe-deny, J.Bird-deny, R.Rubin-deny.

The use variance test questions for this structure were then reviewed with the results as follows: #1(No-5, 0-yes) applicant did not supply any proof of economic hardship and is not deprived of all economic use). #2(5-no, 0-yes) there is no hardship; #3(5-yes, 0-no) it would alter the essential character of the neighborhood; #4(5-yes, 0-no) no hardship and it is self-created.

A motion was made by R.Rubin and seconded by M.Steppe to deny the application for the use of this building for use as living/sleeping purposes, operated for gain. The motion was carried with a poll of the board as follows: J.Crevelling-deny, G.Herbert-deny, J.Bird-deny, R.Rubin-deny, M.Steppe-deny.

Chairman R.Rubin stated that they would now review the use variance test questions for the beach house structure at the south end of the beach to be used for living/sleeping purposes, operated for gain.

It was noted by Chairman R.Rubin that the beach house is allowed to stay as being grandfathered and built prior to zoning. That the grandfathered use of this building is in fact as a beach house not operated for living/sleeping purposes or operated for gain.

The use variance test questions were reviewed with the following results: #1(5-no, 0-yes) no proof of economic hardship presented and applicant is not deprived of all economic use; #2(5-no, 0-yes) there is no hardship; #3(0-no, 5-yes) the use would alter the essential character of the neighborhood; #4(-0-no, 5-yes) no hardship, it is self-created.

Based on the answers to the use variance test questions, a motion was made by J.Bird and seconded by G.Herbert to deny the application for the use of this structure as living/sleeping and operated for gain. In addition, as part of the motion, it was requested by the board members to have CEO Phillips review the plumbing in the beach house at the southern end of the beach and to make a determination of the grandfathered use of the building.

The motion was carried with a poll of the board as follows: J.Crevelling-deny, R.Rubin-deny, M.Steppe-deny, J.Bird-deny, G.Herbert-deny.

Application # 945 for Richard Christensen owning property at 117 Highland Dr., PY requesting an area variance to place a10 ft. by 14 ft. storage shed on the property with less side and rear yard setbacks than zoning requires.

Mr. & Mrs. Christensen were present to answer questions for Zoning Board Members.

It was noted by Mr. Christensen that the proposed location for the storage building was the most level and best suited area for the storage building since the door of entry will be facing the east. In addition, if the property setbacks were to be maintained, it would bring the building very close to the garage, and very close to where the garden is.

The closest neighbors on the west side (Mr.& Mrs. Marchionda) had submitted a letter (copy on file) in support of this project.

Board members recognize that while this area is zoned as agricultural-residential, it is clearly not an area for farming. Most of this area has clearly become residential with PY Central School property located to the north and the Municipal boundary line between the Village of Penn Yan and the Town of Jerusalem going through the east side of this property, the municipal line running from north to south.

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

The Yates County Planning Board reviewed this application and recommended approval based on the materials submitted.

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

A motion was made by G.Herbert and seconded by M.Steppe to grant this area variance as applied for allowing a variance of 20 ft. on the rear yard lot line and a variance of 30 ft. on the side yard lot line. The set back measurements would be 10 ft. from the south side yard property line and 25 ft. from the rear property line as measured to the closest point of the shed including the roof overhang. This motion is made with the consideration by the board members that while this property is located in the Agricultural Residential Zone, this lot is small and this whole area has been built up to become more characteristic of a residential type neighborhood.

The motion was carried with a poll of the board as follows: J.Crevelling-grant, J.Bird-grant, R.Rubin-grant, M.Steppe-grant, G.Herbert-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 nor alter the essential character of this locality.

#### OTHER BUSINESS

Board Members were reminded that next Thursday, November 20<sup>th</sup>, 2008 is the joint board meeting for Town Board, Planning Board, Zoning Board and Staff. Meeting is at 7 pm.

There being no further business, a motion was made by R.Rubin and seconded by J.Bird to adjourn the meeting at 8:25 pm. Motion carried unanimously (5-yes, 0-no).

Respectfully submitted,

Elaine Nesbit/Secretary