

Approved

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

November 12, 2009

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, November 12<sup>th</sup>, 2009 at 7 pm by Chairman Glenn Herbert.

Roll Call:	Glenn Herbert	Present
	Jim Bird	Present
	Jim Crevelling	Present
	Mike Steppe	Present
	Ed Seus	Present
Alternate	Dwight Simpson	Present

Others present include: Larry DeWine, Catherine Anderjack-Garrison, Norman (Bucky) Bates, and Loretta Hopkins/Town Bd.

A motion was made by J.Bird and seconded by J.Crevelling to approve the October minutes as written. The motion was carried (5-yes, 0-no).

COMMUNICATIONS:

The only communications received was a letter from the Yates County Planning Board regarding their review of Application #954, copy on file with application.

AREA VARIANCE REVIEW

Application #954 for H.William Francisco owning property at 210 West Lake Rd. Penn Yan to request an Area Variance to construct an 8 ft. by 15 ft. 6 in. deck addition to be added on to the existing deck that is already on the existing structure.

ZBA Member Jim Bird excused himself from the review and determination of this application since he knows and is a friend of Mrs. Francisco. Alternate board member, Dwight Simpson, took his place for review of this application.

Bucky Bates, contractor for Mr. Francisco, was present to answer questions for the board members. Mr. Bates explained that the deck would be extending from the upper level of the home and would extend out over what is now a cement patio.

It was noted by board members that that this cottage was built prior to zoning and the existing structure itself is very close to the high-water mark as indicated on a survey which was done by Larson & Simolo and dated 10/29/99.

The retaining wall extends the useable land in front of the cottage, but this area itself in accordance with the survey, lies between the mean high and the mean low water mark.

Chairman G.Herbert stated that at the October Zoning Board Meeting, the Zoning Board had made a determination that where area variances are requested that involve breakwalls, the board would refer to a property survey that has a signature and stamp of the surveyor indicating where the high-water mark for the surveyed property is located.

Board Member E.Seus noted that if the area variance were allowed, it would be expanding a pre-existing, non-conforming structure.

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

The Yates County Planning Board reviewed this application due to it being within 500 ft. of County Rd. 27 (West Lake Rd. PY) and determined that there was no significant inter-municipal or county wide impacts and the Zoning Board is free to take action on this application.

A motion was made by E.Seus and seconded by M.Steppe to deny this application based on the fact that while this structure was in existence prior to zoning, it is non-conforming and adding the deck addition would increase the degree of non-conformity of this dwelling.

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

The motion was carried with a poll of the board as follows: G.Herbert-deny, J.Crevelling-deny, E.Seus-deny, M.Steppe-deny, D.Simpson-deny.

Application #955 for Nora Caulfield owning property at 352 West Bluff Dr. to request an Area Variance for a set of stairs for access from the road to the lake with less setback from the side yard property line than zoning allows.

Mr. Larry DeWine, was present to represent Ms. Caulfield and to answer questions for board members.

Mr. DeWine explained that this property already had an existing set of stairs that encroached the property to the south. This property to the south was owned by Dr. and Mrs. Platzer who were good friends of the previous owners of Ms. Caulfield's property. The encroaching stairs were not an issue.

When Dr. Platzer subdivided his property and sold a piece off to Mr. & Mrs. Garrison, a clause was placed in the deed that if the encroaching stairs needed to be repaired/replaced, they would be moved off from this property and on to their own lot.

Mr. DeWine stated that he had to do some repair work to the stairs, and had started the process of taking down the encroaching parts and moving everything over on to Ms. Caulfield's property. He noted that the CEO had stopped by and had left a card that he needed to call the office. Upon calling John Phillips/CEO, he realized that he did need a building permit to remove the stairs and to do the replacement work. Mr. DeWine stated that he stopped the work on the stairs except for replacing some boards down below on the lower stairs and landing near the cottage which was for safety reasons. The work up on top was stopped and the area variance applied for.

It was noted, by Mr. DeWine that in moving the stairway over, it was done in a way so as not to have to disturb the bank where the existing support posts are encased in cement, but to utilize these as part of the new access stairs. He also noted that existing trees would have to have been removed to build the stairs in a different direction and to meet the 10 ft. side yard setback for all parts of the replacement stairs.

Further discussion between board members and Mr. DeWine noted that there was a property line discrepancy that was resolved at the time of the Garrison purchase of the adjoining property.

At the present time, the replaced stairs are 9 ft. from the Garrison property line and there is an approximately 70 sq. ft. deck that is 4 ft. from the property line. This small deck area is to be used by the applicant for 2 garbage containers. It is not met to be a sitting area.

Board Member J. Crevelling quoted from the Zoning Ordinance regarding the fact that when stairs and landings are built for lake access, the landings are to be no greater in size than 16 sq. ft.

Mrs. Garrison was present, being the adjoining neighbor to the south, having some concerns for having the deck only 4 ft. from her property line and if it would have an impact in the future should they decide to sell.

It was noted by Chairman G. Herbert that there would probably never be a house built on the adjoining property between the road and the lake due to the narrowness of the lot.

It was also noted that had the property owner decided to just remove and replace the stairs and landings to the same exact size but moved them so that they were no longer encroaching on the neighbor's property, the zoning would have allowed their replacement under the restoration clause in the zoning ordinance with just a building permit.

Board Member J.Bird stated that while he appreciated the fact that Mr. DeWine had left the support posts that were already there, encased in cement, utilizing them for the new stairs, to avoid disturbing the bank, he felt that the new stairs and deck/landing could have been designed in such a way so as to avoid any area variance at all.

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

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

A motion was made by G.Herbert and seconded by E.Seus to grant the area variance with the following conditions; that the first deck portion of the stairway nearest to the road shall remain and be no larger than 70 sq. ft.; that the setback of this deck from the side yard property line shall be no closer than 4 ft.; that the replacement stairs themselves, shall remain and be no closer than 9 ft. to the property line. If the stairs and deck need to be rebuilt/replaced then all of the stair structure must come into compliance with the required 10 ft. setback.

In discussion of the motion, J.Bird stated that it would be a courtesy to the neighbor to place the garbage cans on the opposite side of the deck area away from the property line.

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

There being no further business, a motion was made by E.Seus and seconded by J.Crevelling to adjourn the meeting. The motion carried unanimously (5-yes, 0-no). The meeting adjourned at 7:55 PM.

Respectfully submitted,

Elaine Nesbit/Secretary