

Approved

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

June 10, 2010

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, June 10th, 2010 at 7 pm by Chairman Glenn Herbert.

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

Others present included: Jud McCarthy, Peter McCarthy, Gerald Kernahan, P.E., Rolf Zerges, Max Parson/Town Bd., Daryl Jones/Town Bd., Philip Bailey/Town Attorney, and other interested citizens.

A motion was made by J.Bird and seconded by M.Steppe to approve the minutes of the May meeting as written. The motion was carried unanimously (5-yes, 0-no).

COMMUNICATIONS:

The Zoning Board received a letter of communication from Attorney Alan Knauf, who represents Mr. & Mrs. Rolf Zerges as neighbors on the south side of the McCarthy property. Letter copied and distributed to board members with one on file with application for interpretation.

ZONING APPLICATION REVIEW:

Application #964 for Gerald McCarthy, c/o Judson McCarthy for property located on Esperanza Dr., Keuka Park, NY requesting an interpretation of the Zoning Code regarding the building of a new single family home on property that does not meet the zoning requirements of the R1 (Lake –Residential Zone). This lot is a pre-existing, non-conforming lot having been owned by the same family since 1973 prior to the Town's adoption of Zoning regulations.

Based on a letter dated (5-14-2010) from Attorney Alan Knauf sent to the Code Enforcement Officer (copied to the Zoning Board and placed on file with application) a decision was made by the CEO not to issue a building permit for a new single family home on the McCarthy property.

Chairman Glenn Herbert noted for the board that this application is not a zone matter, but rather a request of the board to review the zoning ordinance and to interpret what the code means with respect to Article VI, Section 130 (A) & 1(a). He then read these sections of the Zoning Code.

Chairman G. Herbert stated that while this matter is to be discussed by the board members, comments would be taken from the audience, but only as they pertain to the sections of the zoning ordinance under discussion.

It was noted, by the Chairman, per the application materials, that the McCarthy property has a lot size of 9,257 sq. ft. with approximately 53 front ft. of shoreline. This is less than the required 20,000 sq. ft. lot size, as well as not meeting the required zoning lot minimum lake front dimension of 75 ft. by 100 ft. minimum depth.

This lot pre-exists zoning and does not meet the lot size requirements that were adopted in 1974. The zoning board must now make a determination as to how these regulations apply to a piece of property that has been owned by the same family and has been in existence (as it stands today) prior to the adoption of the zoning regulations.

Mr. Peter McCarthy was present to give the board members a brief review of the history of this property. He noted for the board members that it had been purchased by his father in 1973 as an investment and with the hope that maybe one day he or his family would have something of significant value. Mr. McCarthy had obtained a copy of the zoning ordinance to have his attorney review, and basically his attorney had explained to him exactly what the board was discussing tonight. In the opinion of Mr. McCarthy's attorney, even though this property does not conform to the zoning code as adopted, that as long as it stays in the family and is not sold they should be able to build on this lot.

Mr. McCarthy stated that it wasn't until just in fairly recent years that he thought there was even a chance to build a home on this lot. The technology of today, allows things to be built today in places that several years ago would have been unheard of.

Board member E. Seus stated that he did not think the fact that this property was pre-existing and in the same family prior to the adoption of the zoning code makes any difference and does not allow the issuance of a building permit as a pre-existing right to now build a single family home.

Board member M. Steppe made statements to the board in order to understand this situation clearly in his own mind. If this property had been sold a month ago, then this issue would not be before the board, since the buyers would have been made aware that they were buying a non-conforming lot. If the new owner of the property now wished to build a single family home, and applied for a building permit, the Code Officer would have denied the application and given the owner an application for an area variance.

The issue surrounding this interpretation is due to the fact that this applicant is the same family that has owned this property since prior to zoning and does that give the property owner the ability to build on this lot by just obtaining a building permit. All other building requirements except lot size and lot frontage can be met.

Attorney Phil Bailey was present to help the board members in their understanding of the Ordinance and directed them to Article XIII (Nonconforming Uses), Section 160-56 (A,B,C) Continuance. This references the lawful use of land or buildings existing at the date of the adoption of this chapter and whether they may be continued, etc.

The board must look at the phrase “Except as otherwise provided in this Article, thus directing the board to determine what was the use of this or any other property at the time of the adoption of the zoning ordinance. After the board makes a determination of use, then they must make a decision as to whether the property owner can just obtain a building permit, or must be denied a building permit. In this case (and regarding this particular property) a denial would be based on the non-conforming lot size and non-conforming frontage and the fact that there has never been a structure on this property.

While some board members struggled with what seemed to them to be the taking of a person’s right to build a home on their property when it was owned by the same family and the same lot size existed prior to the adoption of the zoning code in 1974, there was a consensus by a majority of the board members that in reading and re-reading the ordinance, that this building application must be denied by the Code Officer and if the property owner wishes, he may apply to the Zoning Board for an Area Variance.

Chairman G. Herbert recognized the adjacent neighbor to the south of this property, Rolf Zerges, who wished to speak to the fact that he has owned his property since 1966. He stated that from his perspective the law is very clear and this lot does not meet the required dimensions and in his opinion that this lot is unbuildable.

A motion was made by G.Herbert and seconded by J.Bird to interpret the law Article VI, Section 160-30 (A) 1a, so that the Code Officer shall not issue a building permit and if the applicant wishes, he may appeal the Code Enforcement Officer’s decision and apply for an Area Variance.

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

OTHER BUSINESS:

Secretary asked board members to check their mailboxes for new training materials before they leave after the meeting.

There being no further new business, a motion was made by E.Seus and seconded by M.Steppe to adjourn the meeting. The motion was carried unanimously (5-yes, 0-no).

The meeting adjourned at 8:30 pm.

Respectfully submitted,
Elaine Nesbit/Secretary