

Approved

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

January 13, 2011

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, January 13th, 2011 at 7 pm by Vice-Chairman Jim Crevelling.

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

Others present: Max Parson/Town Bd., Dave Fitzgerald/Contractor for Mike Ruth.

A motion was made by E.Seus and seconded by D.Simpson to approve the December Zoning Board minutes as written. The motion was carried unanimously (4-yes, 0-no).

COMMUNICATIONS:

There were no written communications.

AREA VARIANCE REVIEW:

Application #976 for Michael Ruth owning property at 7471 East Bluff Dr. to request an Area Variance to remove an existing structure and to replace it with a new garage 18 ft. by 20 ft. and 22 ft. high. The structure to be removed is pre-existing, non-conforming in its location being closer to the north side yard lot line than zoning allows. This building is also closer to the road than zoning allows. The new building would be built in the same location but would extend along the same set back lines by the road and would come farther away from the north side yard set back line than the previous building but the setback would still be non-conforming. The height of the proposed building would also require an area variance since zoning only allows for a 15 ft. high accessory structure for a lot between the road and the lake.

Mr. Ruth's contractor, Dave Fitzgerald was present to answer questions for board members.

Prior to starting the review of this application, Vice-Chairman Jim Crevelling wished to address the board and Dave Fitzgerald, Contractor for Mr. Ruth, regarding the fact that this property presently holds an existing approved area variance to build a garage on the west side of East Bluff Dr.

Vice-Chairman J.Crevelling stated that Mr. Ruth was granted an Area Variance under Application #965 on July 8th of 2010 for a 2 ½ bay garage to be built no closer than 30 ft. as measured from the closest point of the garage to the center of East Bluff Dr. This area variance is good for one year.

Contractor D. Fitzgerald asked if the granted area variance could be cancelled. Vice-Chairman J. Crevelling stated that the area variance that was granted is good for a year.

There are concerns about how this new application should be handled and whether or not a second variance request should be granted for this property for a garage structure. Vice-Chairman J.Crevelling just wanted board members to be reminded that there is an approved area variance already for this property.

There was a brief discussion by board members with D. Simpson stating that he thought it was important for the board to move forward and review this application.

It was suggested that perhaps the board could review the application, review the area variance check list and answer the questions with reasons for majority decision on the test questions, and then wait until the February meeting to make a decision on the application. This would give the Vice-Chairman an opportunity to check with legal council before a decision is made regarding the matter of having an approved area variance already for a building to be built for the same purpose on the same property.

Board members were in agreement to proceed with review of this application. Mr. Fitzgerald presented some drawings that he had put together for this project. He noted that his client, Mr. Ruth had not wanted to spend more money on engineered drawings if he was not able to obtain the needed variances.

Board members noted the letter written by Mr. Ruth attached to the area variance application giving his reasons for not wanting to further pursue the area variance that he had already been granted due to the costs that he would incur in order to meet the Steep Slope requirements.

Mr. Fitzgerald explained the location of the garage and it was noted that since the method of determining the height of a structure has changed to be determined by the vertical distance measured from the average elevation of the proposed finished grade of the building's lowest side elevation to the highest point of the rooftop, that the height of the proposed building would be 18 ft. due to the slope of the property at this location.

Board Members had concerns about some information lacking on the drawing with regards to the garage structure itself and that technically it is not below grade just below the road level. As indicated by Mr. Fitzgerald, the only thing below grade is the footers/supports for the building.

Board members had visited the site and a question was asked by Vice-Chairman J.Crevelling about what appeared to be a slumping of the bank towards the existing boathouse. By building the garage at the top of this bank it will add more downward pressure due to the slope. J.Crevelling also noted that there is an existing oak tree that is probably helping to hold and retain the bank and this would have to be removed for the new structure to be built. If the tree and its root system is removed, there would be even further erosion of this bank.

Mr. Fitzgerald noted that they had put in a new retaining wall behind one of the buildings at this location about a year ago.

J.Crevelling agreed that there is a larger building and a smaller building at this site and he noted that when he had visited the site there appeared to be a series of three retaining walls two of which were in a state of disrepair and slumping in the direction of the building directly in front of them.

Mr. Fitzgerald stated that his client had wanted to build on the west side of the road but the approved steep slopes plan had required more excavation into the embankment thus incurring more expense.

He asked if there was any recourse regarding a change to the approved steep slopes plan. It was noted that anyone could re-apply to the Planning Board using another engineer to come with the appropriate stamped plans for erosion control, and slope preservation. These could then be submitted with new steep slopes application to see if approval would be given.

Vice-Chairman J.Crevelling stated that the zoning board is here to review the area variance application, and the steep slope review/approval is not within their scope of authority.

The board reviewed the area variance test questions as follows:

- 1) Could granting of the area variance change the neighborhood character: (3-yes, 1-no)
The granting of this area variance changes the character of the neighborhood by allowing the accessory structure to be built to the same height as the principal structure. The code allows for a height of 15 ft. for an accessory structure if built between the road and the lake. The proposed structure would be replacing an existing smaller structure.

- 2) Are there alternatives that would not require an area variance: (4-yes, 0-no).
There is already one approved area variance to build across the road at this location.
If this area variance is granted it would require an approval of three variances.
There is an area in the existing basement area in the existing house that could provide space for a workshop.
- 3) Is the request substantial: (4-yes, 0-no). The request is substantial in that there are three area variances that are needed for this project.
- 4) Are there potential adverse impacts on physical or environmental conditions in the neighborhood: (4-yes, 0-no).
There are potential adverse impacts on the physical or environmental conditions of the neighborhood due to the bank that is already slumping towards the lake. There may be other areas of concern which the board cannot identify due to a lack of information.
- 5) Is the alleged difficulty self-created: (4-yes, 0-no). Applicant has approval to build on west side of the road.

Upon completing a review of the area variance test questions, Vice-Chairman J.Crevelling asked board members if they wanted to vote on this application or if they wished to table it.

J.Hoffer stated that he felt the application lacked a lot of information. D.Simpson and E.Seus stated that they felt that they could move forward and vote on this application based on what information they have and then the applicant could decide what to do based on the outcome of their decision. The applicant then has an option to build on the west side of the road or to appeal the Zoning Board decision whatever that decision is.

A motion was then made by E.Seus and seconded by D.Simpson to deny this application as requested based on the applicant's request to increase the size of a pre-existing, non-conforming building by removing and replacing it with a larger one. To do this would require at least two or three area variances, one of which is a variance for the height of the proposed accessory building.

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

It was suggested to the contractor, Mr. Fitzgerald, that his client might want to have another engineer look at his steep slopes issue and re-apply to the Planning Board with another engineer's plan for a different option for building across the road.

OTHER BUSINESS:

It was noted that Board Member/Vice-Chairman Jim Crevelling has been re-appointed for another term on the Zoning Board. Dwight Simpson has been appointed to fill Jim Bird's unexpired term on the board. Jim Bird has been appointed for a two year term as alternate zoning board member. John (Jack) Hoffer has been re-appointed for a one year term as alternate to the zoning board.

There being no further business for discussion, a motion was made by J.Crevelling and seconded by E.Seus to adjourn the meeting. Motion was carried unanimously (4-yes, 0-no) and the meeting was adjourned at 8:10 pm.

Respectfully submitted,
Elaine Nesbit/Secretary