

Town of Jerusalem  
Zoning Board of Appeals

April 9<sup>th</sup>, 2015

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, April 9<sup>th</sup>, 2015 at 7:05 p.m. by Vice-Chairman Jim Crevelling.

Roll Call:	Jim Crevelling	Present
	Glenn Herbert	Excused
	Dwight Simpson	Present
	Ed Seus	Excused
	Earl Makatura	Present
Alternate	Rodgers Williams	Present
Alternate	Joe Chiaverini	Present

Others present: Art & Joyce Hunt, Kip Jugle, Dave Sweet/KC, Jerry Hiller/KC, Jeff Bray/KC, John F. Phillips/CEO, Daryl Jones/Town Bd., Gary Dinehart/Town Bd., Victoria & Roger Dick, Joan & Doug Paddock and Attorney Jeff Graff.

A motion was made by J.Crevelling seconded by D.Simpson to approve the March Zoning Board minutes as written. Motion carried unanimously.

COMMUNICATIONS:

There were no communications

Vice-Chairman J.Crevelling introduced the Town of Jerusalem’s Attorney, Jeff Graff, noting that he had traveled down from Clifton Springs to be at tonight’s meeting. J.Crevelling stated that with everyone’s tolerance the review of the first two applications was going to be reversed taking Application #1043 first and then Application #1042. This would allow the Attorney time to get home a little earlier.

Alternate Rodgers Williams stated that he would be recusing himself from the review of Application #1043.

NEW BUSINESS:

Application #1043 for Art & Joyce Hunt representing Hunt Country Family Farms LLC and Hunt Country Vineyards, owning property at 4021 Italy Hill Road, Branchport, NY. requesting an interpretation of the statement of the Code Enforcement Officer regarding the appropriateness of a café (the preparation and serving of soup and sandwiches) at Hunt

Country Winery as a Special Permitted Use under Small Retail Service Business in the Ag-Res. Zone.

Vice-Chairman J.Crevelling summarized the letter that was sent by the Code Enforcement Officer to the Hunts which basically stated that based on our code that to have a restaurant/café at Hunt Country was not an allowed use within the Ag-Res. District. The Code Officer agreed with this summary.

Board Member D.Simpson stated that in his personal opinion it is a difficult issue to sort out and as a board to get their "arms around" the whole thing and to figure out what it is the applicant is trying to do. It is a fine line with the interpretation of the law and determining what the legalities of the zoning code are and as a zoning board to be responsible in following the Zoning Code as best as they possibly can.

Applicant Art Hunt stated that in the code there are permitted uses and special uses. He stated that special uses are not something that the Code Enforcement Officer has the authority to allow on his own, but it is the Zoning Board that determines whether a special permitted use is an allowed use under the Zoning Code.

J.Crevelling described the permitted uses and the special permitted uses as they are listed in the district of Article V in accordance with 160-18 & 160-20 of the Agricultural District. Anything not listed under these two listings are prohibited. There is no listing of a café or restaurant in either list. He stated that the applicant's request of a café for Special Use would have to come under the listing of a Small Retail Service Business and that was what the Zoning Board needed to look at is whether or not the restaurant/café qualifies as a Small Retail Service Business.

Mr. Hunt was in agreement that his request would fall under Small Retail Service Business and although it does not specifically say café/restaurant, he stated that the list only sites examples, "such as", etc..

Mr. Hunt went on to say that under the provisions of the Ag & Markets law, authorized holders of licenses (under the NY State Liquor Authority) of farm wineries were also permitted to operate a restaurant, hotel, other food and drinking establishments in or adjacent to licensed premise and sell on the premise for consumption wine, cider, wine products, etc. notwithstanding any other provision of law.

J.Crevelling stated that he was not familiar with what Ag & Markets would say about that but that Mr. Hunt is permitted to sell the products at his farm winery, Hunt Country Vineyards LLC, that he sells today under the Ag & Markets umbrella.

Attorney Graff noted that the information that was presented by Mr. Hunt has no bearing on the decision that is before the Zoning Board today. It is merely information that Mr. Hunt has presented. Whether it is an allowable special use or not is a separate issue and even if it were the Hunts would have to come back and make application for a Special Use and go through the review process and get the necessary liquor licenses from NYS.

Attorney Graff went on to say that based on what Mr. Hunt had initially said that he (Mr. Hunt) was interpreting the Code Enforcement Officer's interpretation as saying that he simply couldn't grant a Special Use Permit. However, Attorney Graff stated that in his review of the letter and his discussion with the Code Enforcement Officer the Code does not require him to issue a denial in order for the Zoning Board to get a Special Use Application for Review. The Code Enforcement Officer's interpretation was simply that this use was not listed under Section 160-20 under Small Retail Service Businesses.

Vice-Chairman J.Crevelling stated that this leaves us back where we started, that the issue before this board is whether the requested use of café/restaurant should be considered as a special permitted use under the Small Retail Service Businesses.

Board members J.Chiaverini and E.Makatura were in agreement with the issue before the board.

An adjacent neighbor was present to state that they have been neighbors to Hunt Country for many years and they are supportive of the proposed use. He stated that were just speaking as neighbors.

J.Crevelling stated that this was very important. He also noted that he did not think that there was anyone opposed to the requested use at Hunt Country Vineyards. However, he went on to say that approximately 3 years ago, there was a "Scenic Overlay District" added to the Ag-Residential Zone that stretches from Penn Yan to Branchport along the NYS Rte. 54A corridor. In this district there is a list of special uses and one of them is Small Retail Service Businesses and there is a separate listing for Restaurants. The Town has made a distinction between Small Retail Service Businesses and Restaurants. There is no other zoning district in the Town of Jerusalem that allows restaurants as permitted or special permitted uses.

J.Crevelling went on to say that whether we as individuals or as a board support the proposed use is irrelevant.

Mr. Hunt asked why his proposed use could not be considered under the listing of a small retail service business. He noted that the list given are only examples.

He also stated that whether the board grants a special use to Hunt Country Vineyards LLC or not is based on its own merit and anyone else who applies will have to go through their own application process and review. He then asked the board to review his proposed use in accordance with Section 160-26 A-F under Small Retail Service Businesses.

J.Crevelling stated that he had spent quite a bit of time struggling with what is Small Retail Business compared to Small Retail Service Business. A Service Business is selling something that is intangible. A Service Business is something like a catering business, or someone with a professional expertise that provides a service for what he or she does. He could not explain about the list that the original writers of the Code used, he did, however, mention again, about the listing of a restaurant in the "Scenic Overlay District".

J.Crevelling then read through the list of A-F of Section 160-26. Mr. Hunt asked if his proposed use seemed to violate any of the listed criteria.

Vice-Chairman J.Crevelling stated this is not the relevant issue before the board, but the fact that is this use allowed in the list of uses under Small Retail Service Businesses.

Mr. Hunt stated that he could not understand why a small café that would be located inside their winery would not be considered a small retail service business. Mrs. Hunt stated that they have a nice parking area which is well lighted and they do not generate noise for the neighbors. Mr. Hunt stated that there weren't any wineries at this end of the lake to eat lunch.

J.Crevelling stated that there was no dispute with the Hunts with anything that they were saying, but that they are wanting to do something that is not allowed by the rules that are in the Code. The Town has ruled on this by allowing restaurants as a separate Special Permitted Use in the Ag-Residential, "Scenic Overlay District" which is a different Zone than the Ag-Res. District where they are located and a café is a small restaurant, because they are preparing and serving food for people with a place to sit down and eat on premises.

J.Crevelling went on to say that the rules have to be applied equally and fairly. If anyone else wants to come and apply for a similar use, the same rules have to apply.

Questions were asked as to how the Zoning Code came about and how are changes made to the Zoning Code. J.Crevelling stated that the Code was adopted in 1974 and changes have been made to the Zoning Code over the years and changes continue to be made as they are presented. It is a continuous process.

Mr. Hunt asked how he could get on a committee to help with these changes. It was noted that the place to start is with the Town Board.

Attorney Graff stated that Zoning Laws are amended by the Town Board. Any Questions on Zoning Code amendments would need to be addressed to the Town Board. As to who is on the Planning Board's Committee working on the changes/amendments is up to the Town Board. The way in which these amendments get adopted to the Zoning Code is by a local law.

Attorney Graff also pointed out to the Hunts that going over the six conditions of Small Retail Service Business of Section 160-20 (A-F) is only pertinent if you are actually sitting and reviewing a Special Use Permit Application.

J.Crevelling was in agreement with Attorney Graff's statement regarding there being only one issue before the Zoning Board for Application #1043 and that is to determine whether the proposed use is a use that fits under the Small Retail Service Business in the Ag-Residential Zone as stated in the Zoning Code.

D.Simpson asked what would be the result of their vote tonight. Attorney Graff stated that if the Zoning Board votes to overturn the Code Enforcement Officer's Determination, then the Hunts would need to go back and apply for a Special Use Permit and go through the process to apply for their request as a Special Permitted Use based on the Zoning Board's decision.

If the Zoning Board votes to affirm the Code Enforcement Officer's Determination, then the Hunts have the option of going to the Town Board to see if they can get the Code amended.

J. Crevelling reminded the Zoning Board members that they also have the option of not making a decision tonight but to wait on taking a vote. The Board has sixty-two days. There are four members to vote. Mr. Hunt was in favor of the Board making their decision at this meeting.

A motion was made by J.Crevelling seconded by J.Chiaverini to affirm the determination of the Code Enforcement Officer. The motion was carried with a poll of the board as follows: E.Makatura-agree; J. Crevelling- affirm; J.Chiaverini- affirm; D.Simpson-disagree, the reason for disagreeing was because he felt there was too much of a gray area in the language of the Zoning Code, and that it needs to be looked at a lot closer to be made right.

J.Crevelling stated that the motion carries. He then stated to Mr. Hunt that he needed to get on the agenda for the next Town Board meeting and request an amendment to the Zoning Code. There are two Town Board Members present.

It was noted by Town Board Member D.Jones that while he is not opposed to what the Hunts want to do, his feeling is that if restaurants are going to be allowed in the Ag-Residential Zone then they should be allowed whether as a permitted or a special permitted use, not just for farm wineries or breweries but for anyone who might want to start up a restaurant.

Application #1042 for Ethel Jugle represented by her son, Kip Jugle, owning property at 7338 West Bluff Dr. requesting an Area Variance to allow a temporary dock to be replaced by a permanent dock with less than 10 ft. from the north side yard water right's lines extended into the lake.

It was noted by Mr. Jugle that the property is about 50 ft. wide and the original set up for the dock the raft and the boat hoist was in late 1969. His parents built the cottage in late 1967/68.

Mr. Jugle stated that the dock was on tracks and has been in this position about 45 years. Over time, the steel under-carriage has gotten to the point where the wheels don't stay on the track and about 2 years ago the wheels of the temporary dock came off the track and he has no way to get the track up. What he would like to do is to take the top steel deck and remove the under-carriage and mount the deck on 6 permanent pilings in the same location where the temporary dock has always been located. Based on the location of where the track is located relative to the pin Mr. Jugle thinks he is about 3 ft. to 4 ft. from the water rights lines. This would be 6 ft. feet short of the required 10 ft. set back from the lot lines extended on the north side of the lot for a permanent dock.

R. Williams asked why he couldn't meet the 10 ft. setback with 50 ft. of frontage. Mr. Jugle stated that with the dock, the boat hoist and the raft locations, it makes it hard to maneuver a boat in and out and still get around everything. He would have to put out a set of stairs and gangplank in order to gain access to the dock if the temporary dock has to be moved over from its present location.

J. Crevelling stated that part of the problem facing the board is the fact that this is the first application that the board has been asked to consider for allowing a permanent dock to be built closer to the water right's lines than what the zoning law allows under the dock & mooring law.

Mr. Jugle had approached his neighbor about buying some property on his north side, but this had not worked out.

The area variance test questions were read with the following results:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property owners will be created by the granting of an area variance: (5-no, 0-yes).
2. Whether the benefit to the applicant could be achieved by some other feasible method than an area variance: (0-no, 5-yes).
3. Whether the area variance is substantial: (0-no, 5-yes).

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (1-no, 4-yes). J.Crevelling-yes, E.Makatura-no, D.Simpson-yes, R.Williams-yes, J.Chiaverini-yes.

5. Whether the alleged difficulty was self-created: (0-no, 5-yes).

Mr. Juggle asked the board if they had any idea of how many other 50 ft. lots there were on the lake in the Town of Jerusalem with temporary docks that are placed in similar positions as his.

J.Crevelling stated that as a board they have to apply the rules as fairly as they can across the board to all residents of the Town. Temporary docks do not require permits since they normally would come in and out of the water, however, permanent docks, once they are put in, generally are there to stay, therefore, the board is concerned that the setbacks from extended lot lines be adhered to.

The board was in unanimous agreement that this is a SEQR Type II action.

A motion was made by J.Crevelling, seconded by R.Williams to deny application #1042 to permanently mount the current dock in the position used during the summer months. The motion was carried with a poll of the board as follows: E.Makatura-deny, J.Chiaverini-deny, D.Simpson-deny, R.Williams-deny, J.Crevelling-deny.

Application #1044 for Douglas Paddock owning property at 2812 Wager Hill Rd. PY requesting an Area Variance to place a 14 ft. by 32 ft. wood-tex storage building on his property with less side yard setbacks than zoning requires for accessory structures in the Ag-Residential Zone.

E. Makatura recused himself from voting on this application since he is an adjacent neighbor to this property.

Mr. Paddock was present to answer questions for the board members. He briefly explained about the proposed placement of the building. He stated that there is a deeded right-of-way on the east side of the property which cannot be built on, and this provides a buffer between his property and the neighbor to the east. The neighbor on the west side has no problem with his proposed request and that property on the west side, while not presently being farmed, is open land. Mr. Paddock stated that the building would fit within the boundaries of his own property but would not meet the required setbacks.

His reasons for not placing this building in front of the existing barn, is because there are water and electrical lines through conduit going up through the yard to the existing barn.

In addition, the purpose of the building is for the storage of two cars. The building will have an end door in it which will allow the two car storage.

The building will have a minimum five foot separation distance from the existing barn which is required by the building code.

The reason for not wanting to put the building closer to the house is because there are several large, mature trees in the back yard that he does not want to take down and in staying away from the water and electrical lines it would completely mess up the back yard as he would have to put in another long driveway to get to the building. There are no plans to take down the existing barn.

J.Crevelling stated that while the neighbors were okay with where Mr. Paddock wanted to place this building, Mr. Makatura had some reservations. J.Crevelling stated that he had some concerns as well, since the requested variance was substantial considering the side yard setbacks required are 40 ft. on each side and at best there will only be 6 to 10 ft. on the west side depending on the grade and 1.7 ft. on the east side to the property line, despite the fact that the deeded right-of-way adds another 50 ft. which cannot be built on, but is not land owned by Mr. Paddock and therefore is not considered as part of the required setback.

The area variance test questions were read with the following results:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property owners will be created by the granting of the area variance: (2-yes, 2-no). J.Crevelling-yes, D.Simpson-no, R.Williams-no, J.Chiaverini-yes.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than an area variance: (0-no, 4-yes).
3. Whether the requested area variance is substantial: (0-no, 4-yes).
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the district: (4-no-0-yes).
5. Whether the alleged difficulty was self-created: (0-no, 4-yes).

The board was in unanimous agreement that this is a SEQR Type II action.

A motion was made by D.Simpson seconded by J.Chiaverini to deny the application based on the fact that the requested area variance is huge. D. Simpson stated that he does not remember a time since he has been on the board that there has been a request for side yard setbacks for an accessory building that has been this substantial.



The motion was carried with a poll of the board as follows: R.Williams-deny, J.Crevelling-deny, J.Chiaverini-deny, D.Simpson-deny.

#### OTHER BUSINESS:

J.Crevelling recognized the gentlemen from Keuka College. Jerry Hiller, Dave Sweet and Jeff Bray introduced themselves.

Jerry Hiller talked to the Zoning Board briefly about the Keuka College Athletic Fields. He spoke briefly about the fact that the Town Board is working on correcting the problem of whether or not the Athletic Fields are in place legally by Zoning District, in that this location is the Agricultural-Residential District while the main College Campus is in the R-2 zone which is where educational use is a permitted use.

Mr. Hiller went on to speak about the Keuka College "long range" Master Plan. There is a model set-up over at the Keuka College campus for residents to look at if they would like to see what the College has planned.

J.Crevelling stated that the Town Board had asked the Zoning Board to respond to them with how to expedite changes to the Zoning Ordinance with regards to the proposed changes to the College Athletic Fields. Should there be changes made to the Zoning Ordinance such as the addition of athletic fields as a permitted use or a special permitted use? There was also discussion regarding the fact that as an educational institution they may have some latitude and may be exempt from having to comply with some zoning regulations with regards to having the athletic fields in a zoning district which does not specifically list them as a permitted or special permitted use. This may have been the case when the athletic fields were first put in at the 577 Assembly Ave. location.

Mr. Hiller briefly explained the use of the Athletic Fields while the students are in attendance at the college. He stated that changes to the fields were planned to begin in May with the expectation that Phase I changes would be near completion by the time students returned in late August. Hopefully the fields would be ready for use at this time.

There will be an application for a sign permit at a later date which will require an area variance, but this request had been pulled from the site plan review in order to move the approval process along for Phase 1 work to begin on the change from grass surface to synthetic turf on the one field.

There was a brief discussion of possibly changing the zone district of lands that the college owns except what is already in the R-2 zone.

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There was a suggestion of talking to the former Town Attorney to see if in fact there is case law that allows the College some latitude in allowing them to continue with the athletic fields where they are without going through a zoning change.

Vice-Chairman J.Crevelling stated that he would draft an email to the Town Board as to the thoughts of the Zoning Board of Appeals and would send it around to the Board members for approval prior to sending it on to the Town Board for their meeting on the 15<sup>th</sup>. Board members were okay with this process.

There being no further business to come before the board, a motion was made by J.Crevelling seconded by E.Makatura to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned.

Respectfully submitted,  
Elaine Nesbit/Secretary