

Approved

Town of Jerusalem
Zoning Board of Appeals

August 10th, 2017

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, August 10th, 2017 at 7 pm by Chairman Glenn Herbert.

Chairman G. Herbert asked all to stand for the pledge to the Flag.

Roll Call:	Glenn Herbert	Present
	Ed Seus	Excused
	Rodgers Williams	Excused
	Earl Makatura	Present
	Joe Chiaverini	Present
Alternate	Kerry Hanley	Present
Alternate	Ken Smith	Excused

Others present included: Laurie Tappel, Julie & Christopher Hawk, Larry Barnes, Bob & Dotti Jansen, Britt & Dolly Hallenbeck, Wendy & Chuck Meagher, Marla Makatura, Daryl Jones,

A motion was made by E.Makatura seconded by G.Herbert to approve the July Zoning Board minutes as corrected. The correction to the July Zoning Board minutes is under OTHER BUSINESS: Earl Makatura will be in attendance at the August 10th Zoning Board meeting but will recuse himself from taking part on Application #1099 for Area Variance since he is the contractor for this project. The motion to approve these corrected minutes was carried unanimously.

COMMUNICATIONS:

Zoning Board members had received updated letters from L. Tappel for Application #1090 which was tabled from the July Zoning Board meeting.

AREA VARIANCE/SPECIAL USE REVIEW:

Application #1090 for property at 12471 East Bluff Dr. requesting an Area Variance to build a second story addition onto an existing cottage which is located on a lot having two principal dwellings on the same lot. This lot having two principal dwellings are pre-existing, non-conforming, as the two cottages were built approximately in the 1930's.

The property is located in the Lake-Residential (R1) Zone and while the lot has approximately one acre of land, the cottages are located fairly close together and the northern most cottage is the one that Ms. Tappel is requesting an area variance for adding a second story. The northern cottage is also located 3 ft. from the north side yard property line.

Chairman G. Herbert stated that application #1090 which was tabled from the July Zoning Board meeting so that the Zoning Board could get some clarification on some of the Zoning Laws regarding non-conforming properties. The attorney has responded and to summarize, the issues are a non-conforming building and what constitutes the use of that property. The non-conforming building is one that doesn't meet the code. The code essentially defines conforming as a single dwelling on one lot. There are two dwellings on this lot. The one building is three feet from the north side yard property line. Those two issues deem this property non-conforming. There were definitions that were unclear but the definition of expansion while not defined in the code seems to be a term that everyone uses and the board needs to decide on its meaning and application.

Article XIII Nonconforming uses § 160-56 Continuance (B) No non-conforming building shall be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance

Ms. Tappel was present to answer questions for board members and had given board members updated letters from the previous July Zoning Board meeting (copies on file with application). Ms. Tappel took a few minutes to briefly explain her reasons for wanting to add a second story to her home and why she felt the impacts would not have an impact on the environment or nearby properties. Ms. Tappel's sister and brother-in-law who own the second cottage on the lot were present and they spoke in full support of this addition.

Chairman G. Herbert then asked the other board members for comments as to this application. Chairman G. Herbert mentioned that the Attorney also recommended that this not be an Area Variance.

Chairman G. Herbert asked board member E. Makatura to read the Area Variance Test Questions: Board Secretary asked for clarification of what the test questions were being asked for, the side yard set back or the expansion of the building. There seemed to be a consensus that the building would not be coming any closer to the side yard lot line so there was no need to go through the test questions for an area variance.

The board did not have a use variance application in front of them, however, G. Herbert asked to go through the Area Variance test questions based on the proposed expansion of the building just for the record.

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

1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance: (2-no, 2-yes) G. Herbert-no, E. Makatura-yes, J. Chiaverini-no, K. Hanley-yes.

2) Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (2-no, 2-yes) G. Herbert-no, E. Makatura-yes, J. Chiaverini-no, K. Hanley-yes.

3) Whether the requested area variance is substantial: (0-no, 4-yes).

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (3-no, 1-yes) G.Herbert-no, E.Makatura-no, J.Chiaverini-yes, K.Hanley-no.

5)Whether the alleged difficulty was self-created: (4-yes, 0-no).

Chairman G.Herbert stated that in accordance with the way the zoning laws are written the board cannot grant the application as applied for.

A motion was made by G.Herbert and seconded by E.Makatura to deny the application as applied for. The motion was carried with a poll of the board as follows: J.Chiaverini-agree, K.Hanley-agree, E.Makatura-agree, G.Herbert-agree.

It was suggested that Ms. Tappel make an appointment with the Code Enforcement Officer to meet at the site to see what options might be available to move forward with her project that would be more conforming with this location.

Application #1096 for Rocco Polino owning property at 9411 East Bluff Dr. requesting an Area Variance to demolish existing home and replace with a two-story home on a full basement with less set-back from the rear yard lot line than zoning requires. This property is located in the Lake-Residential Zone.

Wendy Meagher from Meagher Engineering was present to give a presentation of the requested Area Variance and to answer questions for board members. Ms. Meagher noted for the board members that the new home would be coming closer to the rear yard lot line than the existing home in order to keep away from the steep embankment towards the lake and avoid disturbance to this area.

The current location of the new home more towards the center of the lot was to keep as many of the existing trees as possible and it is also in an area that is away from the steep slopes area so as not to disturb this part of the lot.

The only variance being asked for is the distance (9 ft.) from the rear yard lot line or 34 ft. from the center of the road. All other requirements are being met including all other set-backs, height, and lot coverage.

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

1)Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance: (4-no, 0-yes).

2)Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (2-yes, 2-no) G.Herbert-yes, the home could be built smaller, E.Makatura-yes, J.Chiaverini-no, K.Hanley-no.

3)Whether the requested area variance is substantial: (4-no, 0-yes).

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (4-no, 0-yes).

5)Whether the alleged difficulty was self-created: (4-yes, 0-no).

A motion was made by G.Herbert and seconded by K.Hanley to grant the Area Variance application to allow the proposed home to come no closer to the center of the road than 34 ft. as measured to the closest part of the proposed new home including roof overhang.

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

The motion was carried with a poll of the board as follows: E.Makatura-grant, J. Chiaverini-grant, K.Hanley-grant, G.Herbert-grant.

Application #1097 for Dorothy Jean Jansen owning property at 3062 West Lake Rd., Penn Yan, NY requesting an Area Variance to build a one car detached garage closer to the rear yard lot line than zoning requires for a lot located in the Lake Residential Zone.

Mr. Jansen presented the application and answered questions for the board.

The required setback to the rear yard lot line is 30 ft. and the Jansen's proposed setback is 14ft. to the rear yard property line so they would be asking for a 16 ft. variance. There is state land to the west of their property before the actual travelled portion of the road (NYS State Rte 54A) starts.

It was asked if the garage was pre-built and Mr. Jansen stated that the garage was a wood-tex structure that would be built on site.

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

1)Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance: (4-no, 0-yes).

2)Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (3-no, 1-yes) G.Herbert-no, E.Makatura-no, J.Chiaverini-no, K.Hanley-yes.

3)Whether the requested area variance is substantial: (4-no, 0-yes).

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (4-no, 0-yes).

5)Whether the alleged difficulty was self-created: (4-yes, 0-no).

There being no further questions, a motion was made by K.Hanley seconded by J.Chiaverini to approve the application for a 14 ft. variance as applied for with the proposed garage to come no closer than 16 ft. to the rear yard property line as measured from the closest part of the building including the roof overhang.

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

The motion was carried with a poll of the board as follows: E.Makatura-grant, G.Herbert-grant, J.Chiaverini-grant, K.Hanley-grant.

Application #1098 for Greg Mahns owning property at 3228 Skyline Dr., Penn Yan, NY requesting Area Variances in two Parts. Part I: requesting an Area Variance of 3.6 ft. for the existing garage that does not meet the required 40 ft. south side yard setback at the southeast corner. Part II: requesting an Area Variance of 25 ft. from the south side yard property line for a proposed 12 ft. wide by 40 ft. long pole shed for storage of fire wood for his two wood-burning furnaces that he uses to heat his home. The location of the structure is requested at this distance for convenience to the house and because of the location of his wastewater leach system if he were to have to move the building to a location to meet the 40 ft. side yard requirement. (Narrative attached to application on file).

Mr. Mahns had Ken Larson, Land Surveyor, come back out to re-affirm the south boundary line of his property and that's how he knew that his garage was not in compliance at the southeast corner.

Chairman G.Herbert noted for the board that once again this is a residential lot and the board has discussed several times about the zoning being changed for accessory structures having different setback requirements' when they are on residential sites versus agricultural sites. Several area variances are applied for each year for the same request and the Zoning code should be amended for this type of request.

The area variance test questions were read and reviewed taking into consideration both Part I & II of the area variance requests with the following results:

1)Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance: (4-no, 0-yes).

2)Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (3-yes, 1-no) G.Herbert-no for the answer to Part I for the garage and Yes for Part II for the Pole building for the fire wood, E.Makatura-yes, J.Chiaverini-yes, K.Hanley-yes.

3)Whether the requested area variance is substantial: (4-no, 0-yes).

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (4-no, 0-yes).

5)Whether the alleged difficulty was self-created: (4-yes, 0-yes).

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

A motion was made by K.Hanley and seconded by G.Herbert to grant this application as applied for with a 3.6 ft. variance for the existing garage at the southeast corner and a 15 ft. variance for the pole shed for fire wood storage allowing the 12 ft. by 40 ft. shed to be no closer than 25 ft. to the south side yard lot line as measured from the closest part of the building including the roof overhang.

The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E.Makatura-grant, G.Herbert-grant, K.Hanley-grant.

Application #1099 for Michael Delsanto owning property at 2869 West Lake Rd., Penn Yan, NY requesting an Area Variance to build a deck addition 5 ft. by 12 ft. onto the front of the existing cottage with less setback from the high-water mark than zoning requires.

Board member E. Makatura had already recused himself from taking part on this application.

Marla Makatura, was present to represent Mr. Delsanto and to answer questions for board members with regards to this application.

The requested variance was 4 ft. with the proposed deck being 11 ft. from the 15 ft. high-water mark.

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

1)Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance: (3-no, 0-yes).

2)Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (2-no, 1-yes) G.Herbert-no, J.Chiaverini-no, K.Hanley-yes.

3)Whether the requested area variance is substantial: (3-no, 0-yes).

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (3-no, 0-yes).

5)Whether the alleged difficulty was self-created: (3-yes, 0-no).

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

A motion was made by G.Herbert and seconded by K.Hanley to approve the area variance application as applied for to allow the proposed deck to be built no closer than 11 ft. to the high-water mark as measured from the closest part of the deck.

Zoning Board Minutes
August 10th, 2017

The motion was carried with a poll of the board as follows: J.Chiaverini-grant, K.Hanley-grant, G.Herbert-grant.

OTHER BUSINESS:

The next month's zoning board meeting will be on September 14th, 2017 and it was noted that there are already 4 applications on the agenda.

There being no more business, a motion was made by K. Hanley and seconded by E. Makatura to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned.

Respectfully submitted,

Elaine Nesbit/Secretary