

Approved

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

April 8<sup>th</sup>, 2021

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, April 8<sup>th</sup>, 2021 at 7 pm by Chairman Rodgers Williams.

The meeting was called to order with everyone standing for the pledge to the Flag.

Roll Call:	Rodgers Williams	Present
	Earl Makatura	Present
	Lynn Overgaard	Present
	Joe Chiaverini	Present
	Glenn Herbert	Excused
Alternate	Jim Bird	Present
Alternate	Steve Schmidt	present

Others present included: Daryl Jones/Town Board, Brian & Susan McKinnon.

A motion was made by J. Bird and seconded by L. Overgaard to approve the March minutes as written. The motion was carried unanimously.

COMMUNICATIONS:

Two emails of support from adjacent neighbors for Applications 1191 & 1192 were distributed to zoning board members (copies on file with applications).

AREA VARIANCE/SPECIAL USE REVIEW:

Area Variance Application #1191 for Brian and Susan McKinnon for property at 693 Beechnut Rd., Branchport, which is located in the (R1) Lake-Residential Zone, requesting an Area Variance to install two pilings in the lake bed south of an existing permanent dock to be used in conjunction with an existing dock structure to accommodate a boat hoist installation. The requested area variance is for the extension of the two pilings to be 4 ft. towards the south littoral water rights line bringing them six ft. from that south line where 10 ft. is required for permanent pilings per the dock and mooring law, Article XXI, Section 160-122 (D).

Mr. McKinnon explained the reason for his request and noted that his neighbor to the south did not have any concerns with the pilings being put in and being only six ft. from the littoral water rights line.

Mr. McKinnon provided a picture of what the pilings would look like and their attachment to the permanent dock. The hoist would work within this frame work to lift the boat out of the water.

Board members did not have any concerns with this application.

The area variance 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: (5-no, 0-yes). J. Bird - no because it is no different than any other port hole opening.

2)Whether the benefit sought by the applicant can be achieved by some other feasible method than an area variance: (4-no, 1-yes): E. Makatura – no because of the way the lots are situated and no room to do anything different; R. Williams-yes, he could get a moveable dock and would not need a variance for that; J. Bird-no because of the size of the lots and if he moved it to the north where there was more room it wouldn't fit there either; L. Overgaard-no, J. Chiaverini-no.

3)Whether the requested area variance is substantial: (4-no, 1-yes); J. Chiaverini-no, L. Overgaard – yes because it's so close to the water right's line; J. Bird-no; E. Makatura-no, R. Williams-no.

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (5-no, 0-yes).

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

This is a SEQR Type II action.

There being no further discussion, a motion was made by R. Williams and seconded by J. Bird to grant the area variance request to allow the two pilings to be placed in the lake bed extended 4 ft. from the existing permanent dock bringing them 6 ft. from the water littoral rights line. This will allow for the framing to enable the use of a boat hoist in conjunction with the permanent dock. There will be no permanent structure closer than 6 ft. to the water littoral rights line. The motion was carried unanimously by a poll of the board as follows: J. Chiaverini-grant, L. Overgaard-grant, E. Makatura-grant, J. Bird-grant, R. Williams-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this location.

Application #1192 for Brian and Susan McKinnon for property at 693 Beechnut Rd., Branchport, which is located in the (R1) Lake-Residential Zone requesting an area variance to build an addition to their existing year-round home to construct a master bathroom as part of increasing the size of the master bedroom. The proposed addition would increase the degree of non-conformity by extending the addition along the north property line at a distance of only 2.5 ft from the property line where 10 ft. is required. In addition, the lot coverage is already over the allowed 20% lot coverage by 4.2% and this would increase by 1.4% to 25.6% if the area variance is granted.

Chairman R. Williams read from the code with regards to pre-existing, non-conforming properties and the change that has been made to the code with regards to expansion for a pre-existing, non-conforming lot or building (Article XIII, Section 160-56) (B) (1) (2).

Mr. McKinnon stated that he thought that was what the Zoning Board of Appeals was for, i.e., when someone wanted to do something that the code did not allow that an applicant could appeal to the Zoning Board for a variance.

He noted that in 2015 he had been allowed to add a 7 ft. by 10 ft. addition onto the north side of his home and that expansion was not conforming in that it was only 2.5 ft. to 3 ft. from the side yard property line. E. Makatura stated that the code has been reviewed and re-looked at since 2015 with a more in-depth interpretation of what the code is actually saying about pre-existing, non-conforming properties and uses.

Mr. & Mrs. McKinnon noted that when her parents come there is hardly enough room for her handicapped dad to get into the bathroom and has to go sideways to accommodate his handicap equipment in getting there.

There was a question about whether an existing shed could be removed in exchange for the lot coverage to accommodate the addition so as to not further increase the lot coverage. Mr. McKinnon stated that it was a possibility but he was not happy about it.

There was again a question again about whether the Zoning Board could override what the code is actually saying about not expanding in the case of a pre-existing, non-conforming building with regards to lot coverage and in a building's location with regards to expanding in a non-conforming direction towards lot lines.

Board members understood what the McKinnons wanted to do but did not feel that they had the authority to grant the area variance application and Chairman Williams stated that it was his opinion that the Code is quite clear about this.

Mr. McKinnon stated that he would like to get his own legal opinion about what the code is actually saying and whether or not the zoning board could actually approve an area variance. He asked if the Zoning Board would get an opinion from the Town Attorney. Chairman Williams stated that he would consider talking to the Town Attorney to make sure his interpretation was correct.

The zoning board members discussed tabling this application until the May Zoning Board meeting. Mr. McKinnon stated that he would appreciate the application being tabled so that he could get his own legal opinion with regards to the expansion of non-conformity due to lot coverage and the expansion towards the north side-yard lot line.

A motion was made by J. Bird and seconded by E. Makatura to table any further review of this application until the May Zoning Board meeting. The motion was carried with a poll of the board as follows: R.Williams-table, J.Chiaverini-table, L. Overgaard-table, E. Makatura-table, J. Bird-table.

## OTHER BUSINESS

Chairman R. Williams gave board members copies of information on Special Use Permits and discussed with board members about the rules to go by as they review special use permits and make their decision to grant or deny. He noted that they are an administrative body not a legislative body.

He also noted the importance of looking at the zoning code and following what the Code lists as Special Permitted Uses in the different zoning districts. He also noted that if there are reasons for why a board member thinks a special use should not be granted then it is important to give valid reasons for this when they vote to grant or deny.

After reviewing the procedures for special use permits the application for Keystone Custom Decks as presented by Mahlon Esh at the March Zoning Board meeting was discussed. Noting that the application was denied at the March meeting, a general discussion took place with regards to whether or not there were reasons that the board should re-visit this application.

A discussion took place with regards to the building size and it was pointed out that the building meets all the requirements of the Ag-Residential Zone with regards to height which at 22 ft. it is well under the allowed 35 ft. height limit, and it meets all of the other setback requirements from lot lines and meets lot coverage. It was still a concern of a couple of board members that the building still looks out of place when considering the other residential homes in the area. One board member pointed out that the code states that in the scenic overlay district the architectural design shall avoid long unbroken planes of building frontage and should reflect the rural vernacular character of the neighborhood. It was noted that perhaps an awning on the front would help to break up that look. It was suggested that if the applicant would consider a modification to the way the building looks to make it look more like it blends in with the surrounding residential properties, they would be more inclined to approve it.

It was also noted by another board member that the Town Board was not in agreement with the decision of the Zoning Board at their March meeting for this application. Some zoning board members expressed their disappointment with the scenic overlay district in that it has not turned out to be very helpful but more of a problem for applications that have to be dealt with in this overlay district. It was even suggested that the overlay district be removed or the special permitted uses should be looked at more closely and definitions for each use be better defined in the definitions section of the code.

Upon further discussion, it was decided by board members that they would at least be willing to re-visit the Special Use application/decision. A motion was made by R. Williams and seconded by E. Makatura to ask Mahlon Esh as representative for Keystone Custom Decks to come to the May Zoning Board meeting for discussion and re-visit of the decision of his proposed Special Use in the hopes that an agreement can be reached to the satisfaction of both Mr. Esh and the Zoning Board. The motion was carried unanimously with a poll of the board as follows: J.Chiaverini-revisit, J. Bird-revisit, L. Overgaard-revisit, E. Makatura-revisit, R. Williams-revisit.

Zoning Board Minutes  
April 8<sup>th</sup>, 2021

Board members were reminded that Application #1182 for Thomas Sudek was also postponed from the March meeting until the May 13<sup>th</sup> Zoning Board meeting.

There being no further business, a motion was made by E. Makatura and seconded by R. Williams to adjourn the meeting. The motion was carried unanimously.

Respectfully submitted,  
Elaine Nesbit/Zoning Secretary