

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

November 09, 2006

The regular monthly meeting of the Town of Jerusalem Zoning Board was called to order by Chairman Jim Jameson on Thursday, November 9th, 2006 at 7 pm.

Roll Call:	Jim Jameson	Present
	Robert Worden	Present
	Glen Herbert	Present
	Bob Fox	Present
	Ron Rubin	Present

Others present included: Jim Creveling/ZBA alternate, Jim Bird/ZBA alternate, Bill McCloud, Toni Peterson, Jim Coots, Attorney Don Schneider, Walter Morey, Mike Folts/Town Bd., Ed Seus, and other interested citizens.

A motion was made by J.Jameson and seconded by R.Rubin to approve the October Zoning Board Meeting as written. Motion carried unanimously (5-ayes, 0 nays).

COMMUNICATIONS

An updated copy of a site plan which includes the topo for application #883 which was mailed to Zoning Board Members.

An updated copy of a survey for application #883 which has been handed out to board members.

OLD BUSINESS

Application #882 for Sarah Fischer owning property on East Bluff Dr. across the road from 1073 East Bluff Dr. requesting an area variance to build a structure with less front yard setback on the west side of East Bluff Dr. than zoning allows. The structure to consist of a two-bay garage on the bottom with a two-bedroom apartment on top. This structure will be built into the bank with excavation of the bank to allow for a requested variance of 35 ft. and the structure to start at 35 ft. as measured from the center of East Bluff Dr. and as per the new submitted site plan including topo of the site area.

Mr. Jim Coots, contractor for the Fischers, was present to answer questions for board members and to discuss the proposed plans.

Board members discussed the proposed application, noting the steepness of the bank in accordance with the submitted topo map. It was noted again, that the request for this area variance was only the first step in a series of steps that would need to be gone through before a structure could be built.

Board member, R. Worden, made mention of the sensitivity to steep slopes and their development in accordance with the newly updated comprehensive plan.

It was noted that the applicant would need to obtain a driveway permit from the Jerusalem highway department and approval from the highway superintendent as to how the driveway is put in.

The area variance test questions were reviewed with the following: #1(1-no, 4-yes) #2(2-no, 3 yes) #3(1-no, 4-yes) #4(2-no, 3-yes) #5 (0-no, 5-yes).

There was a brief discussion about the board having allowed garages to come this close to the road right-of-way, in the past, however in this case, they have concerns when the proposed structure will also have living space above it and be only ten feet out of the road right-of-way. In addition, it is noted that the excavation of the bank at this location would be quite extensive with the excavated bank to be a minimum of 9 ft. at the back of the building.

A motion was made by J. Jameson and seconded by B. Fox to deny this application based on the request being substantial and that it would have an adverse impact on the physical and environmental conditions of the neighborhood with only a ten foot setback from the road right-of-way and the excavation into the bank; that there is enough land available for other alternatives.

The motion to deny was carried with a poll of the board as follows: R. Worden-deny, R. Rubin-grant, G. Herbert-grant, B. Fox-deny, J. Jameson-deny.

Application #883 for Toni Peterson & Robert Rumphrey owning property at 657B West Bluff Dr. to request an Area Variance to build a deck addition to the existing deck on the lakeside of the beachhouse with less front yard setback than zoning requires.

Ms. Peterson was present with Bill McLoud/Contractor to answer questions for board members.

Chairman J. Jameson discussed the previous variance (#603) granted to the former owner of this property. There were questions about the lower deck near the dock landing and when that was built. There was also a question regarding whether an area variance had been granted for the lower deck.

Board Member R. Worden wished to review the previous paperwork as to what actually was granted for this location under the previous ownership. It was noted the previous area variance granted a 14 ft. setback from the high water mark for the storage area and day use building with a future 10 ft. deck extension with the same setback. The building applied for was to be 12 ft. by 18 ft. with steps to access the building and beach area.

It was noted by R. Worden that the original application did not show a lower deck and that somehow one was built having its location very close to the highwater mark without a building permit. It was also noted that the rear yard setback has not been met, i.e. 45 ft. from the center of West Bluff Dr.

Regarding the deck closer to the highwater mark, it was noted by Ms. Peterson that when they purchased the property, they had to do some work on the steps for beach access and they had replaced what was there, making it slightly larger. It was noted that when the original steps were built, that there was probably a small landing which when replaced probably was enlarged to a deck without a variance to the high water mark. The storage shed/beachhouse itself is 2 ft. closer to the highwater mark than should have been built and has less than 20 ft. rear yard setback.

A motion was initially made by R. Worden, then added to by R. Rubin to amend Area Variance #603 as follows: (1) to allow for the present existing beachhouse/storage shed that was built (13.3 ft. x 19.5 ft.) to remain, coming 1.3 ft. closer to the highwater mark than allowed by the original variance which granted a 12 ft. setback. (2) The upper deck addition is 13.3 ft. x 15 ft. with the set back from the rear yard lot line being 10 ft. instead of the required 20 ft.. (3) The lower deck, which started out as a small landing with the stairs for beach access, was then enlarged to become a deck with dimensions of 11 ½ ft. by 15 ft. and built less than a foot from the highwater mark. These various dimensions are substantiated by the survey dated 11/5/2006 and signed by Richard Willson, submitted as part of the application for Area Variance #883. The motion was seconded by G. Herbert.

The motion to amend variance #603 was carried with a poll of the board as follows: G. Herbert-grant, B. Fox-grant, J. Jameson-grant, R. Rubin-grant, R. Worden-grant.

In amending 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 minimum variance modification that will accomplish this purpose. This variance modification will not be injurious to the neighborhood or alter the essential character of this locality.

The board discussed the requested area variance application #883 to build a deck addition to the existing beachhouse extending it at the second story level across the front of the beachhouse and the deck would be above the stone patio with a width of 12 ft.. This would put a portion of the deck lakeward of the highwater mark.

An adjacent neighbor spoke regarding the proposed width, and while he did not speak against the request, thought it would be more aesthetically pleasing if the deck was built with a slight setback, i.e. 10 ft. wide as opposed to 12 ft. wide.

The area variance test questions were read and answered with the following: #1(3-no, 2-yes) #2(5-no, 0-yes) #3(1-no, 4-yes) #4(2-no, 3-yes) #5(0-no, 5-yes).

A motion was made by J.Jameson and seconded by R.Worden to deny application #883 as requested based on the amount of the variance requested being substantial. The motion to deny was carried with a poll of the board as follows: R.Rubin-deny, B.Fox-deny, G.Herbert-deny, R.Worden-deny, J.Jameson-deny.

A second motion was offered by G.Herbert to allow a second story deck 8 ft. wide by 19.5 ft. in length which would put the deck 3 ft. from the highwater mark or a 12 ft. variance as measured from the closest point. The motion was seconded by R.Rubin.

The motion was denied as follows: R.Worden-deny, J.Jameson-deny, B.Fox-deny, G.Herbert-grant, R.Rubin-grant.

#### NEW BUSINESS

Application #885 for Joyce Wicker owning property at 825 East Bluff Dr. and requesting a modification of Area Variance #388 granted on 1/9/89 and building permit #91-229 issued on 11/8/91 to conform to the garage as built, or if necessary, direct changes.

A survey map completed by surveyor David Andersen on 5/25/1998 was provided to the Town in 1998 to determine the actual garage location. This survey provides board members with as built dimensions and location of the garage.

Attorney Don Schneider was present to represent the applicant Joyce Wicker.

Attorney Schneider briefly reviewed the history regarding this structure, stating that the original application asked for a 24 ft. x 28 ft. by 14 ft. high garage to be built out of the road right-of-way. The reason given for the area variance setback request was due to the steepness of the lot and the rock formation at the proposed site location. This area variance was granted on 1/9/89.

Attorney Schneider stated that when the building permit was applied for in 1991, it was issued for a 24' by 36' garage to be 16 ft. high. This building permit as issued was not legally authorized since the granted variance was for a 24' x 28' garage.

Attorney Schneider stated that another issue he would have to deal with, concerns the portion of the building that extends into the Town Highway right-of-way 1.8 ft. at the north end and 1.4 ft. at the south end plus the roof overhang encroachment. He stated that he would take up this issue with the Jerusalem Town Board and Town Attorney.

Attorney Schneider stated that his request for the Zoning Board was to consider amending the original area variance to include the extra width of the garage at the front building line that was not part of the original variance granted.

He stated that the garage itself is pretty much in conformance with other garages in the area. The garage sets back a distance from the actual road pavement and he offered a picture that actually shows a car parked in front of the garage with a little room before the pavement starts.

There was a brief discussion as to what was on the second floor. Attorney Schneider stated that as far as he knew there was nothing up there. It was noted that while the use of the 2<sup>nd</sup> floor area of the garage is one issue, the height of the garage is not an issue since the zoning change for accessory structures in the R1 zone was not changed until 1993 well after this garage was built.

There was a brief discussion about the discrepancy between the actual area variance that was granted and the building permit that was issued in 1991. It was noted that the original application process started under the first CEO then the second CEO was appointed just prior to the issuance of the 91-229 building permit. The zoning is clear about the time when an area variance is granted and the building process is supposed to begin within a year of the granting of the variance, however, with the change of Town personal, this could have been the problem.

Chairman J. Jameson raised a concern about the railing or deck along the front of the garage and asked if the glass shown was slider doors or windows. He then stated that this part of the building is in the road right-of-way and therefore is not the zoning board's concern. He also had a concern about modifying the original area variance and including the additional 6.4 ft. of additional length and what message this is sending to the Town Board in allowing this portion of the garage to stay.

Attorney Schneider asked about how this garage differs in respect to a similar garage located down the road and built about the same time.

Board member R. Worden stated that since this occurred back in the late 80's early 90's, there appeared to be errors on both the part of the applicant and the CEO at the time. He stated that the modification for this additional length of garage was not a huge issue since it still meets the side yard setback and would probably have been granted as part of the original area variance if it had been requested.

J. Jameson made a motion to grant application #885 as follows: to allow the extra length of the garage (6.4 ft not originally requested in application #388) 34.4 ft. along the front building line of the property where it meets the road right-of-way and to allow the depth of the garage as built dealing only with the portion that is located on the Wicker property west of the upper side of the East Bluff Dr. road right-of-way. It is noted that the Zoning Board is not dealing with any portion of the garage that is located in the road right-of-way. The height of the garage is as built, since the change in height for accessory structures in the R1 zone did not become local law until 1993.

This motion was seconded by B.Fox and carried as follows: R.Worden-grant, G.Herbert-grant, R.Rubin-grant, J.Jameson-grant, B.Fox-grant.

In granting this area variance modification the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimum variance modification that will accomplish this purpose. This area variance modification will not be injurious to the neighborhood or alter the essential character of this locality.

There being no other business, a motion was made by J.Jameson and seconded by R.Worden to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned at 8:30 pm.

Respectfully submitted,

Elaine Nesbit/ZAP Secretary