

Approved
TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

October 11, 2007

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order by Chairman Ron Rubin on Thursday, October 11th, 2007 at 7 pm.

Roll Call:	Ron Rubin	Present
	Glen Herbert	Present
	Bob Fox	Excused
	Jim Jameson	Excused
	Jim Bird	Present
Alternate	Jim Creveling	Present

Others present included: Charles Carter, Brian Tolbert, Helen, Vincent, & Charles Scarpechi, Mike Steppe, Don & Maryellen Evans, Pat Gunderman & Dr. Don Tumonis, Tim McMichael, Jim Koester, Phil Cardamone, Mike Bunting, Douglas Bugner, Mike Folts/Town Bd., John F. Phillips/CEO, and Bob Andersen.

A motion was made by J.Bird and seconded by J.Creveling to approve the September Zoning Board minutes as written. Motion carried unanimously (4-yes, 0-no).

COMMUNICATIONS

Letters received and copied to the Board Members with reference to particular applications will be noted upon review of the request.

AREA VARIANCE/SPECIAL USE

OLD BUSINESS:

Application #911 for Tim McMichael owning property on Skyline Dr.

identified as Lots 4,5, 6 & 7; to request a Special Use Permit to combine lot parcels as one lot and build four duplex housing units as a multiple dwelling development. Configuration of these duplex units will be oriented and spaced to meet the zoning criteria and to preserve a minimum of two acres of this property as green space in accordance with the Town Comprehensive Plan.

Mr. McMichael was present to briefly describe the proposed project and to answer questions for board members.

The Yates County Planning Board looked at this submitted application and based on the referred materials submitted, recommended approval of this action.

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The Jerusalem Planning Board reviewed this application. A negative declaration was made after the Board reviewed and completed Part II of the SEQR.

The Planning Board passed the special use on to the Zoning Board recommending approval of the multiple dwelling development concept and approval for final site plan with the following restrictions:

0. Must conform to the private road standards.
0. Landscaping according to the CAD drawing provided.
0. Lighting, if any, be down lighting.
0. Hook up to Keuka Park water and sewer.
0. The proposed 4 acres be combined into one deed.
0. The remaining acreage will be green space.

Chairman R.Rubin noted that there were no neighbors present wishing to address this application.

A clarification was made with regards to the right-of-way into the property (per the Planning Board to Mr. McMichael) that it be a 50 ft. right-of-way with the actual traveled way for ingress/egress be hard pack surface of 24 ft.

A question was raised regarding the 30 ft. radius for emergency vehicle access and turn around. CEO Phillips noted that the design for the individual duplex driveways are configured with the 30 ft. radius in such a way that it should be adequate for turn around purposes.

The site plan drawing (File # 075690.DWG by David Andersen 9/28/07) for this application shows the Project Area as 2.050 acres. The drawing needs to be amended to show that there are actually four acres that are part of this project.

A question was raised with regards to other utilities (electric, telephone, etc.) and if these were going to be underground. It was noted by Mr. McMichael that all utilities serving these duplex units are to be buried.

If a need arises for additional parking, Mr. McMichael stated that there would be sufficient room near these units to provide additional parking areas.

A motion was made by G.Herbert and seconded by R.Rubin to approve this special use application for 4 duplex units on 4 acres of land served by central water and sewer and all utilities servicing these units are to be buried. The special use approval is also subject to the restrictions placed on the final site plan approval as noted by the Planning Board and listed above.

The motion was carried with a poll of the board as follows: J.Bird-grant, J.Creveling-grant, G.Herbert-grant, R.Rubin-grant.

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NEW BUSINESS:

Application #913 for Charles Carter owning property at 3860 County House Rd., Branchport to request area variances to build a 32' x 36' garage with less east side and north rear yard setback than zoning requires.

Mr. Carter was present to describe his plans for the proposed garage and to answer any questions for board members.

Mr. Carter stated that he wanted a little space between the house and this building otherwise he would just attach it to the house with a breezeway.

It was also noted that the area out in front of the house and the road (the southwest section of the lot) was part of the septic field and therefore un-useable space.

Board members were concerned with the 10 ft. setback from the east side yard property line being quite close to the adjacent neighbor's home.

The Yates County Planning Board reviewed this application as submitted and recommended approval of this proposed request.

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

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

A motion was made by R.Rubin and seconded by G.Herbert to deny the application as applied for due to the excessive variance requests and proximity to the adjacent neighbor's house. The motion was carried with a poll of the board as follows: J.Bird-deny, J.Creveling-deny, G.Herbert-deny, R.Rubin-deny.

A motion was then made by G.Herbert and seconded by J.Bird to allow a minimum side yard and rear yard setback of 20 ft. for this garage. The motion was carried with a poll of the board as follows: R.Rubin-deny (have applicant re-apply), J.Creveling-grant, J.Bird-grant, G.Herbert-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 minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this locality.

Application #914 for Patricia Gunderman owning property at 2456 County House Rd., Penn Yan, to request an area variance to build a garage for storage with less side yard setbacks than zoning requires.

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Ms. Gunderman and Dr. Don Tumonis were present to describe what the proposed project and to answer questions for board members. It is noted that the setback measurements as shown are measured from the wall of the building and does not include roof overhang.

Dr. Tumonis distributed two pictures with a site clarification drawing (copy on file with application) showing an aerial view and the reason for the requested side yard variances.

It was noted that the proposed building was not to be located in the center of the lot due to the existing topography and to leave a fire lane access to the back portion of the lot area. There is also an existing wet spot that can be an issue for access.

The adjacent parcel of land to the east is also owned by Ms. Gunderman and has an existing house and barn located on it. There is an existing driveway between these two properties that would provide the access to the proposed garage. The existing barn on the adjacent lot is approximately 25 ft. from the side yard property line. The existing barn is a two-story structure and not very appropriate to store the tractor, antique farm equipment, camper and other items that Ms. Gunderman and Dr. Tumonis want to store.

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

Board members were in agreement that this is a Type II SEQR action.

A motion was made by J.Bird seconded by R.Rubin to deny this application due to the fact that the lot in the area for the proposed barn is narrow and the variances are substantial. The motion was carried with a poll of the board as follows: J.Creveling-disagrees with motion to deny, G.Herbert-deny, R.Rubin-deny, J.Bird-deny.

There was some discussion after this vote by board members and the applicant with a general consensus that the applicant may wish to re-apply by downsizing the building or moving the proposed location to an area so that the requested variances would not be so substantial.

Application #915 for Brian Tolbert owning a vacant piece of property on the end of the Bluff requesting an area variance to build a barn for storage purposes with proposed height and rear yard setback being greater than zoning allows.

Mr. Tolbert was present to answer questions for board members and explain why he needs the storage area. Mr. Tolbert stated that he owns the adjacent property where his home is located. This storage building will be the primary building on this piece of property. He noted that when he applied for the building permit, CEO Phillips was ready to issue the permit and then called to inform him that he needed a height variance.

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Mr. Tolbert stated that he knew of another neighbor that had a similar building near by that was the only building on the property and it had a height greater than 15 ft.

It was noted by a board member that the proposed building is actually bigger than the applicant's house. Mr. Tolbert stated that he had plenty of room in his house. He plans on making this his permanent residence in 6 to 8 years and has a sailboat, cars, a boat, a motorcycle, etc. that he wants to store in this building.

There was a general discussion as to whether this proposed building is a primary structure or an accessory structure. Mr. Tolbert stated that he felt that this is a primary structure since it will be the only building on this lot.

There was further discussion about the definition of a primary and accessory structure.

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

A motion was made by G.Herbert and seconded by J.Bird to table making a decision on this application until the November meeting in order to get a clarification from the Town Attorney on primary and accessory use structures in accordance with the Jerusalem Zoning Code.

The motion was carried with a poll of the board as follows: J.Creveling-table, R.Rubin-table, J.Bird-table, G.Herbert-table.

Secretary will forward a copy of application #915 to the Town Attorney for his review and clarification on the matter of this definition.

Application #916 for Douglas Bugner owning property at 444 East Bluff Dr. to request an area variance to keep the existing landing and walkway for emergency egress from a bedroom in the loft area of existing building. The area variance request would also be looked at as an amendment to a previous decision (April 24th, 2007) made concerning this property under application #896 for Area Variance which did not allow any building construction over the open deck attached to this structure.

Mr. Bugner was present to answer questions for board members and to explain the reason that the walkway/ramp and landing are there. He stated that the NYS Building and Fire Code requires a means of egress from this bedroom area in case of an emergency.

CEO Phillips confirmed for the Board Members that this is, in fact, a requirement of the NYS Building and Fire Code.

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Letters from two nearby neighbors were sent and copied to board members having no objections to this application. Copies on file with application.

Board Members were agreeable to amending their previous decision regarding no construction over the existing open deck.

Board members were in agreement that this is a SEQR Type II action.

A motion was made by R.Rubin and seconded by G.Herbert to grant the area variance for the 3ft. wide by 17 ft. long landing and walkway/ramp which is an amendment to their previous (4/24/07) decision, with the conditions that it not be enlarged, enclosed, screened in or replaced with anything different than what is built as of 10/11/2007. This amendment is made due to the safety requirements of the NYS Building and Fire Code.

The motion was carried with a poll of the board as follows: J.Bird-grant, J.Creveling-grant, R.Rubin-grant, G.Herbert-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 minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this locality.

Application #917 for Donald & Maryellen Evans owning property at 225 West Lake Rd., PY to request an area variance to remove and replace an existing cottage on the same footprint, add a second story,

also removing existing shed, deck and some stairs which will help reduce the lot coverage to become more conforming to what zoning allows.

Mr. & Mrs. Evans were present to describe their proposed project and to answer questions for board members.

It was noted by Mrs. Evans that the present lot coverage is approximately 27.4% and by the removal of the shed, deck and stairs and replacing with a two-story home the lot coverage will be reduced to approximately 23.4 to 24%. The replacement structure will be five feet from the highwater mark whereas the existing cottage is right on the water. The existing retaining wall is crumbling and badly in need of repair. The Evans have already started the paper work process to obtain a permit from DEC to replace/repair the wall. The north side yard setback is presently at 7 ft. and the plan for the replacement home is to be at 10 ft. as required for side yard setback and this distance is measured from roof overhang.

Bob Andersen who designed the plans for the Evans, stated that the overall height of the new home would be just under 35 ft. thus meeting the zoning requirement for the home.

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Neighbors were present that live across the road from this proposed project and they had no problems with this application.

Yates County Planning Board reviewed the application and based on the submitted materials has recommended approval of this proposed project.

Richard Osgood is the engineer working on the designs for the retaining walls that will be needed for this project.

This structure will be hooked up to public water and sewer. In

addition, when the new home is built, the Evans plan for the electric to be placed underground as well.

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

There will be a basement area for this house, but the first floor living space will be located at 722 which is 1 ft. above the 100 year flood mark (721 ft.) and meets the zoning code requirements.

Board Members were in agreement that this is a SEQR Type II action.

A motion was made by G.Herbert and seconded by J.Bird to grant this area variance based on the fact that the proposed plan will reduce the degree of non-conformance with the replacement home for this property. The motion also requires to be no closer to the highwater mark than 5 ft. and the lot coverage shall not exceed 25%.

The motion was carried with a poll of the board as follows: J.Creveling-grant, J.Bird-grant, R.Rubin-grant, G.Herbert-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 minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this locality.

Application #918 for James Koester owning property at 1000 East Bluff Dr. requesting an area variance to build a storage garage 36' wide x 32 ft. deep with a requested height of 20 ft.

Mr. Koester was present to answer questions for board members. Mr. Koester briefly reviewed his proposed plan which had some significant changes since his previous application.

The proposed garage is slightly downsized and will be built into the bank. Due to the repositioning of the building and the other revisions that have been made all of the setback requirements can be met.

Chairman R.Rubin stated that he appreciated the work that Mr. Koester had done to revise his plans and to work with suggestions that had come up when he applied under his previous application.

Letters from several neighbors in support of this project had been received and copied to board members. Copies of these letters are on file with the application.

Board members were in agreement that this is a SEQR Type II action.

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

A motion was made by J.Bird and seconded by J.Creveling to grant this application as applied for. The motion was carried with a poll of the board as follows: G.Herbert-grant, R.Rubin-grant, J.Bird-grant, J.Creveling-grant.

In granting this Area Variance the board finds that the strict application of this variance chapter would deprive the applicant of reasonable use of the land and is the minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this locality.

OTHER BUSINESS

Chairman R.Rubin read a letter (copy on file) which he had received from Attorney Don Schneider. Attorney Schneider's letter, written on behalf of his client Mr. William Sutherland, asked the board to revisit their decision on Special Use Application #907. The Zoning Board held

a Public Hearing on this application on August 9th and rendered their decision at the Zoning Board meeting on September 13, 2007. The application was denied at that time.

Board members were also in receipt of a letter from Town Attorney Phil Bailey (copy on file) to Chairman R.Rubin giving the board members some background for how special use permits should be reviewed and the criteria to be considered by the board when making a decision for a uses that are specially permitted.

Based on these letters, and a copy of the Town Law § 267-a, section 12, a motion was made by J.Bird and seconded by R.Rubin to revisit this application at the November Zoning Board meeting.

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The motion was carried with a poll of the board as follows: G.Herbert-yes, J.Creveling-yes, R.Rubin-yes, J.Bird-yes.

Zoning Secretary will advertise this in the public notices for the November Zoning Board meeting and will send letters to neighbors within 200 ft. of this property that the board will revisit this matter.

There being no further business, a motion was made by R.Rubin and seconded by G.Herbert to adjourn the meeting. The motion was carried unanimously (4-yes, 0-no) and the meeting was adjourned at 8:45 pm.

submitted,

Nesbit/Secretary

Respectfully

Elaine