

Approved as Amended  
1/10/08

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

November 8, 2007

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order by Chairman Ron Rubin on Thursday, November 8, 2007 at 7 pm.

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

Others present included: Mike Steppe, Jim Creveling/ZBA Alternate, Ed Seus, John Phillips/CEO, Brian, Carolyn & Rylie Tolbert, Bill & Pat Orcutt, Jack & Darla Holly, Bob Worden, Robert Hawley, Clarence Swingle, Joe Williams, Stephanie Sauer, Bill and Sharon Olin, Gerald and Brian Mayo, Jesse Bond, Bill Sutherland, and Attorney Don Schneider.

Chairman R.Rubin opened the meeting by acknowledging that this would be Bob Fox's last night as a Zoning Board Member effective after this meeting. He thanked Bob for his time and service while on the Zoning Board.

A motion was made by J.Bird and seconded by G.Herbert to approve the October Zoning Board minutes as written. The motion was carried (5-yes, 0-no).

COMMUNICATIONS:

A letter regarding application #922 was received and distributed to board members. Copy on file with application.

A letter to Chairman R.Rubin from Attorney Phil Bailey regarding principal and accessory structures had been copied and distributed to board members. Copy on file with Application #915.

OLD BUSINESS

Application #915 for Brain Tolbert owning a piece of vacant property on the end of the Bluff requesting an Area Variance to build a barn for storage with height and rear yard setback greater than what zoning allows in the R1 zone.

This application was tabled from the October Zoning Board meeting to give the Zoning Board an opportunity to have the Town Attorney review the matter of Accessory and Primary structures.

Mr. Tolbert was present to review again his requested area variance for a two story storage shed on his vacant land property that is adjacent to the lot that his house is on.

Chairman R.Rubin gave a brief summation of Attorney Bailey's letter regarding accessory and principal structures and stated that the accessory structure could not be built on this lot as it is currently being applied for. Mr. Tolbert was given a copy of Attorney Bailey's letter.

It was noted that Mr. Tolbert asked if there were other options. It was pointed out that he could combine both lots into one and then would still have to apply for an area variance for the height of the accessory building if he wanted to go higher than the allowed 15 ft.

Mr. Tolbert mentioned a neighbor that had two similar types of buildings that were on single separate lots. It was noted, however, that though they were there, a mistake had probably been made and they should not have been built as such. It was not an issue that had come before the Town Zoning Board. Mr. Tolbert could seek legal council as to what other options he might have regarding his request.

A motion was made by R.Rubin and seconded by J.Jameson to deny this application as applied for based on the letter from the Town Attorney and his explanation of accessory buildings in this zone and their relationship to principal structures in this lake-residential (R1) zone and the need for a primary structure on a lot before an accessory structure can be built in this lake residential zone.

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

#### NEW BUSINESS:

Application #919 for Gerald Mayo owning property at 751 West Bluff Dr. requesting an application to build a pole barn type storage building for storage purposes with a height of 23 ft. which is greater than zoning allows for an accessory structure in this R1 zone.

Mr. Mayo was present to answer questions for board members and to state that when he first applied for this area variance he needed two variances, one for height and the other was for a created non-conforming lot. Mr. Mayo, since then, has purchased additional square footage from his son to be added it to his property to make the lot conforming. Copy of deed of purchased land on file with application.

The only variance now needed is the height variance. He noted that he and his wife would be selling their place in Rochester and moving down here and needed the storage space.

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

Board members discussed other possibilities with the applicant and noted that maybe he could make the building larger but not as high.

Board Members were not in favor of granting a 23 ft. height variance for this storage building. It was noted by one of the board members that a storage building which is 20 ft. high would allow for storage area in the middle section of the upper area by the roof and still allow for the desired roof pitch that the applicant is seeking.

A motion was made by G.Herbert and seconded by J.Bird to deny the application as requested for a 23 ft. high accessory building but accept an amended motion to allow an accessory building with a maximum height of 20 ft.

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

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

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 #920 for John & Darla Holly owning property adjacent to 449 East Bluff Dr. identified as lake front parcels with Tax I.D.#'s 84.36-1-2 (80 ft.) and 84.36-1-17 (30 ft.) wanting to give 9 ft. to the lake front parcel having the 30 front ft. to make it more conforming.

Attorney Don Schneider was present along with Jack and Darla Holly to explain that the reason for asking for the area variance is to make sure that there is a record on file with the Town that by adding the 9 ft. to this 30 ft. lot, it will create a new lot which will be less non-conforming than as a 30 ft. lot.

Board members were concerned about property across the road which would be sold. It was noted that some of the properties will have lake access and others will not.

One neighbor spoke in support of this area variance but had some concerns about the provision of the parking area for those people up on the hill who would come down to use the lake that this area not be turned into an area for long term parking of boats, boat trailers, jet-skies, perhaps a camper, etc.

If it is used for perhaps someone's car or golf cart that is parked there temporarily while someone is down by the lake, then he did not have a problem. Attorney D.Schneider spoke for the Hollys and they were in agreement that they could make provisions in the deed as properties are sold that this parking area would only be used for lake access by the owners and not become a parking area for campers, boat trailers, etc.

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

There was a brief discussion about the existing deck and stairs on this 30 ft. lot which is the lot farthest to the north. Attorney Schneider stated that it provides access to the lake and is there legally.

It was noted that legally the applicant could leave the 30 ft. lot as it is since the deed was in place prior to the adoption of zoning. The additional 9 ft. will be added to it to make it a less non con-forming lot. Attorney Schneider also stated that from a planning perspective it is better to have this lot less non-conforming than to have three fifty-three foot lots.

It was noted that legally the applicant could leave the 30 ft. lot as it is since the deed was in place prior to the adoption of zoning.

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

A motion was made by G.Herbert and seconded by R.Rubin to grant the area variance to give 9 more ft. to the 30 ft. lot to make it more conforming. It is understood by the applicant that this designated parking area is permanent but its use will be short term, not to become a parking area for long term storage. The motion was carried with a poll of the board as follows: B.Fox-grant, J.Bird-grant, J.Jameson-grant, G.Herbert-grant, R.Rubin-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 #921 for Stephanie Sauer owning property at 695 West Bluff Dr. to request an Area Variance for a storage shed located on this property but with less front yard setback than zoning requires.

Mrs. Sauer was present to answer questions for board members regarding the storage shed.

Mrs. Sauer stated that they had placed a small storage shed on their property and did not realize that a building permit was needed for a pre-built, temporary shed.

It is the intent of the applicant that they would eventually move the shed back closer to the bank to provide more room for parking in this area.

It was noted by board members who went out to visit the site that this building is located approximately 13 ft. from the center of the road. The actual road right-of-way is considered to be 25 ft. from the center of the road. Neither the zoning board nor the Building Inspector have jurisdiction to allow anything to be placed or built within this area. The board's jurisdiction begins at the edge of the road right-of-way for any area variance consideration. By moving the building back an additional 5 ft. to the bank still keeps the shed at 18 ft. as measured from the center of the road and still within the highway right-of-way.

Board members discussed possible options for the applicant which included removal of the building, excavating into the bank to provide placement for the shed out of the road right-of-way, or to find some other location on the property for the building.

The possibility was discussed for maybe placing the shed on the lower side of the road near the cottage but out of the road right-of-way.

The area variance test questions were read with the board members thinking in terms of the application being amended to read that the placement of the building would be just out of the road right-of-way with no front yard setback or in the case of placement on the lower side of the road, no rear yard setback. The question results are as follows: #1(3-yes, 2-no); #2(0-yes, 5-no); #3(3-yes, 2-no); #4(2-yes, 3-no); #5(5-yes, 0-no).

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

A motion was made by J.Bird and seconded by J.Jameson to deny the application as requested (because the shed placement would be in the road right-of-way) but to grant an area variance for the building to be no closer than 25 ft. as measured to the center of the road whether placed on the upper or lower side of the road. This shed shall remain as built at 64 sq.ft. and the Town is not responsible for any damage due to routine highway maintenance.

The motion was carried with a poll of the board as follows: B.Fox-grant as amended, J.Jameson-grant as amended, J.Bird-grant as amended, R.Rubin-deny because of wanting to see details of the proposed new location before granting, G.Herbert-grant as amended.

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 detrimental to the neighborhood nor alter the essential character of this locality.

Application #922 for Sharon & William Olin owning property at 650A West Bluff Dr. to request an Area Variance to allow a deck addition and hot-tub to remain as built at this location.

Mr.& Mrs. William Olin were present to answer questions for board members and to give the board a brief review of the history regarding this property.

It was noted that the property had an existing deck which was on the cottage when the Olins purchased it. The cottage and the original deck were built prior to the adoption of zoning. The hot-tub and deck addition were built in 1986.

Board members asked if the hot-tub is connected to the deck. Mr. Olin stated that it sits below the deck area. Mr. Olin stated that the portion of deck area added to incorporate the hot-tub is a 7' x 8' area with a cut-out for a platform with the hot-tub.

An adjacent neighbor, Mr. Clarence Swingle, had sent letters to all the Board Members, however they had not been received in time for the zoning board meeting, so \* more Mr. Swingle provided copies and these were distributed. \* (See 1/10/08 ZB Min.)

A letter from another neighbor, Mr. Schauman, had been received and distributed. Copies of both letters are on file with the application.

Mr. Swingle addressed the board with comments concerning the Olin's deck and stated that in accordance with the Town's assessment records the deck which was initially built was 16' x 16' and was first assessed in 1984. Mr. Swingle stated he did not think the additional deck area and hot-tub have been assessed since there was no building permit or variance for them.

It was noted by board members that the deck on this property at 650A West Bluff Dr. has been reviewed at Town Court, at which time the Olins provided the Justice with a picture dated 1972 showing the cottage and the smaller original 16' x 16' deck. The dated picture provided by the Olins of the original 16' x 16' deck was accepted by the Town Justice as proof that it was built prior to the adoption of zoning in 1974. It is also noted that the deck on the property at 650 West Bluff Dr. has yet to go before the Town Justice.

Zoning Board Member J.Bird stated that what the Zoning Board is looking at is the deck addition and hot-tub that was added to the original deck without a building permit or a variance. The original deck grew larger from a 16' x 16' deck to a 16' x 22' deck and a 14' x 8' deck with a hot tub curving on the south side and has a hot-tub added so that it is closer to the lot line than zoning allows and this addition was built without a permit.

Mr. Olin stated that the original deck and cottage were both 5.8' from the property line as pre-built before the adoption of zoning in 1974.

Chairman R.Rubin asked the board members if everyone understood what part of the deck along with the hot-tub are under review as part of this area variance application.

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

A motion was made by R.Rubin and seconded by B.Fox to deny this area variance as applied for because there is a way to rectify this problem without giving an area variance. To remove the hot-tub and portion of the deck \* 14'x 8' associated with the hot-tub along with the additional length of deck that encroaches past the line of the cottage towards the north side yard property line in accordance with the survey submitted with the area variance application. \* (See 1/10/08 ZB Min.)

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

#### OTHER BUSINESS

Review of Decision dated (9/13/07) made by the Zoning Board of Appeals with regards to Application #907 for Special Use Permit for William Sutherland for a five unit townhouse at the corner of Pear St. and Assembly Ave. in Keuka Park. The unanimous decision of the board to revisit this 9/13/07 decision

Mr. Bill Sutherland was present along with Attorney Don Schneider to answer any questions for board members.

A unanimous decision had been made by the Zoning Board of Appeals at their October Zoning Board meeting to revisit the 9/13/07 decision for Special Use #907, based on a letter of request from Attorney Don Schneider on behalf of Bill Sutherland.

A letter from Attorney Phil Bailey was sent to the Zoning Board Members (copies distributed with one on file with Special Use #907).

This letter gave board members an explanation of special use permits and how they are allowed in certain zones. Special uses are permitted but must be reviewed by both Planning and Zoning Boards so additional conditions may be placed on the allowed use that will enable it to fit with surrounding properties of the neighborhood.

A letter from an adjacent neighbor in opposition to this special use was received but not in time for the zoning board meeting. Copy on file with application and previous decision of the zoning board.

Chairman R.Rubin stated that the decision which the Zoning Board had made to deny Special Use application #907 for the 5 unit townhouse structure at the corner of Assembly Ave. and Pear St. in Keuka Park was incorrect and the letter from Attorney Bailey had helped clarify what special permitted uses are and how they fit into an particular zone.

It was noted by Chairman R.Rubin that the Yates County Planning Board had approved this application. In addition the Jerusalem Planning Board had approved this application adding some conditions that would help this special use fit in with the surrounding properties in the neighborhood. The SEQR form was reviewed with the Planning Board making a determination of a negative declaration for this special use.

Chairman R.Rubin reviewed the Planning Board conditions that were placed on this special use that were passed on to the zoning board recommending approval of the special use (copy on file with application).

The board was asked if there were any additional conditions to add to this proposed special use. There were no additional conditions given.

Chairman R.Rubin made a motion to amend the previous zoning board decision and grant this special use permit for the five-unit townhouse and recommend that the approval is subject to the same conditions as listed by the Planning Board.

A concerned neighbor, Jesse Bond, asked if he could speak to this application. He was concerned as to why this matter was being re-visited when it was denied two months ago. He was concerned about the setback requirements of the area in connection with Pear St.

Mr. Sutherland addressed concerns with regards to his property and Pear St. and Assembly Ave.

Mr. Bond asked if this matter could be tabled so that he could explore legal options and rules and regulations of the Zoning Board.

Chairman R.Rubin stated that the board was not in a position to table this matter. The Zoning Board had been made aware of their incorrect review of a special permitted use and therefore needed to review and correct their earlier decision.

Chairman R.Rubin explained the conditions that are placed on special permitted uses. Mr. Bond asked if there could be some type of regulations placed on townhouses, duplexes, condominiums, apartments with regards to the renters, parking, noise, litter, etc.

It was stated that any changes made regarding these types of special permitted uses need to be directed to the Town Board. The Zoning Board works with the zoning laws as they are currently written.

Attorney D. Schneider addressed Mr. Bond to state that the Zoning Board of Appeals is trying to work within the constraints of the zoning law.

The reason that notices are sent out to neighbors ahead of time is so that they can come prepared for any concerns that they might have. This particular special use approval has already been delayed for two months and the hope is that it can now go forward.

Chairman R.Rubin asked if there were any other comments. Zoning Secretary restated the motion. The motion was seconded by J.Bird and the motion was carried with a poll of the board as follows: G.Herbert-grant, B.Fox-grant, J.Bird-grant, J.Jameson-grant, R.Rubin-grant.

Chairman R.Rubin introduced Michael Steppe and Ed Zeus as newly appointed alternates to the Zoning Board.

There being no further new business a motion was made by R.Rubin and seconded by J.Bird to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Elaine Nesbit/Secretary