

Approved

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

January 14, 2010

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, January 14th, 2010 at 7 PM by Vice-Chairman Jim Crevelling.

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| Roll Call: | Glenn Herbert | Excused |
| | Jim Crevelling | Present |
| | Jim Bird | Present |
| | Mike Steppe | Present |
| | Ed Seus | Present |
| Alternate | John Hoffer | Present |

Others present included: John & Michelle Chiaverini, David Hostutler, Michael & Lorraine Williams, Walter & Betty Poreda, Dwight Simpson/Alternate ZB member, and Max Parson/Town Bd.

A motion was made by E.Seus seconded by J.Bird to approve the December Zoning Board Minutes as written. The motion was carried unanimously (5-yes, 0-no).

COMMUNICATIONS

The letters of communication received for Area Variance Application #956 & #958 were copied and distributed to Zoning Board Members. Copies of letters on file with applications.

AREA VARIANCE REVIEW

Application #956 for John & Michele Chiaverini owning property at 3684 Willett Road, Penn Yan, NY 14527 to request an Area Variance to build a pole barn 24 ft. x 104 ft. x 10 ft. with less set back from the side yard property line than zoning requires for an accessory structure in the Agricultural Residential Zone.

Mr. & Mrs. Chiaverini were present to answer questions for board members and to explain what they wished to do with the building.

It was noted by Mr. Chiaverini that the reason for the placement of this building in the proposed location was because that is where it would best suit their needs. The reason they can't meet the required 40 ft. side yard setback in this location is because it would put the building partially on top of their septic system and leach field area.

One board member stated that in his opinion there is plenty of room to place this building on the lot and meet the required setbacks without having to ask for an area variance.

Mr. Chiaverini stated that they wanted to keep their backyard area open plus way out back would be harder to get to. He noted that there is a driveway located down near the south side of their property where they wish to locate the building which they could use for access.

One board member stated that this building is very large and for the neighbors to the south to look out from their home and to have a building this large on the other side of the property line would be quite intimidating.

It was noted that the neighbors do not object to the building itself, but they are concerned about having their view obstructed. In addition, if the area variance is granted to allow the building to be built in this location what affect might that have on the resale value of their property.

A question was asked about the sliding door and its location on the east side of the proposed building and it appeared that in order to use this door, would mean going across the leach field area.

Mr. Chiaverini stated that the drawing was not to scale and that the location of this sliding door would be further to the south to avoid going over the leach field. When asked what the building was going to be used for, Mr. Chiaverini stated that it was to be a storage building for contents out of their main garage, their basement, and other things that they need to store.

Chairman J.Crevelling asked Mr. Chiaverini if he was planning to store the unlicensed vehicles that are in his driveway in this proposed building. Mr. Chiaverini stated that there would probably be room for them.

The Chairman told Mr. Chiaverini that by having these unlicensed vehicles in his driveway, he is in violation of the State Code unless they are put under cover.

Chairman Crevelling suggested to Mr. Chiaverini that he contact the CEO regarding this matter, since it has been noted by the Zoning Board Members at this meeting that the violation exists. This violation will be forwarded to the Code Enforcement Officer so that it can be remedied.

The area variance test questions were reviewed with the following findings:

1) Could granting of area variance change the neighborhood character: #1(5=yes, 0=no); the building being proposed is quite large especially with its proposed proximity to the road and the neighbor's lot line.

- 2) Are there alternatives not requiring a variance: #2 (5-yes, 0-no); Applicant/Property Owner has 5 acres of land with other areas of the property where the proposed building could be placed and meet all of the required zoning setbacks.
- 3) Is the request substantial: #3 (4-yes, 1-no); Required side-yard setback for an accessory building in the Ag-Res. zone is 40 ft. and the area variance request is to be only 20 ft from the side yard property line.
- 4) Adverse impact on the physical or environmental conditions in the neighborhood: #4(5-yes, 0-no); Due to the size and proposed location of the building, it would partially block the east view of the neighbor's that are located to the west of this property.
- 5) Whether the alleged difficulty was self-created: #5(5-yes, 0-no). The applicant has no other room in this particular portion of his property for placement of this building due to the location of his house, the septic system, and other buildings that have been built on the west side of his house

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

A motion was made by J.Bird and seconded by J.Crevelling to deny this application based on the fact that the property owner has sufficient room to place this building on his property and meet all the required zoning setbacks.

The motion was carried with a poll of the board as follows: M.Steppe-deny, E.Seus-deny, J.Hoffer-deny, J.Crevelling-deny, J.Bird-deny.

Application #958 for Mr. & Mrs. Dave Hostutler owning property at 912 East Bluff Dr. requesting an Area Variance to remove the existing front porch and replace it with one that extends a greater distance along the side of the cottage facing the road. The area variance is needed because the setback from the center of the traveled way (East Bluff Dr.) to the closest point on the house which will be the steps coming off the porch does not meet the required distance of 45 ft.

Mr. Hostutler explained that he has a white picket fence along the edge of the yard but the smaller porch which was 8' x 6' did not meet the required setback either. The new porch will be 8 ft. in width but will extend along the west side of the cottage 28 ft. in length.

Mr. Hostutler explained that his contractor, Mr. Williams had gotten started on this project without a building permit. Mr. Hostutler thought that the setback requirement from the center of East Bluff Dr. was supposed to be 36 ft. instead of the required 45 ft.

When the Code Enforcement Officer stopped by and noticed the work going on he then contacted Mr. Williams, who talked with the Code Officer and stopped working on the porch, then made application for a building permit as well as filing the area variance application.

Since this project had been started without a building permit, board members asked some questions of Mr. Williams and Mr. Hostutler about the construction of the porch so far and the integrity of the support posts, etc. It was noted that any issues regarding the construction and its integrity should be reviewed with the Code Enforcement Officer.

Mr. Hostutler stated that he parks across the road and wants to keep this back yard area open and his reason for expanding the length of the porch was for aesthetic purposes. He stated that there are many other similar cottages that encroach their rear yard property lines. They are much closer than this porch will be. The neighbors to the north had sent a letter to the Zoning Board stating that they were in favor of this project. Mr. Hostutler stated that he had received emails from two other neighbors that were also in support of this project.

The Area Variance Test Questions were reviewed with the following findings:

- 1) Possible change to neighborhood character: (0-yes, 5-no) There are other cottages with porches located on their side facing the road, which extend closer to the road right-of-way than this one will.
- 2) Alternatives not requiring an area variance: (1-yes, 4-no) the buildable area in this location does not have the required set-back that zoning requires due to the location of the cottage itself.
- 3) Substantiality of the request: (3-yes, 2-no) The required zoning setback as measured from the center of the right-of-way to the closest point on the cottage/porch is 45 ft. and with the two steps added to the front of the porch, the property owner will lack 11 ft. from meeting this requirement.
- 4) Effect on physical or environmental conditions if granted: (0-yes, 5-no). The expansion of the length of the porch along the west side of the cottage will not have an effect on the physical or environmental condition of the neighborhood.
- 5) Is the situation self-created: (5-yes, 0-no); Property was purchased in 1995 with existing cottage and small porch.

Board members had other questions about some other sheds on the property, some stairs, etc. that appeared to be located in positions that would have required area variances unless they were grandfathered.

The stairs were actually located in an area where there had been a pre-existing building on a cement slab. The building was removed in order to put the stairs in.

Board member J.Bird stated that when he visited the property site, knowing that work had begun without a building permit, it sends up a “Red Flag” and he questions what else may have been done without a permit. Seeing several sheds on the property that are located too close to property lines is a cause for concern if they have been placed there without proper building permits or variances. He suggested to Mr. Hostutler that these sheds and anything else that is built too close to the lot lines without variances or proof of being grandfathered should be reviewed with the Code Enforcement Officer.

It was noted by board members that any building plans that might be planned for the future need to be reviewed with the Code Enforcement Officer before any work is done, just to make sure that all the proper permits are obtained.

It was further noted that the smaller porch which was pre-existing did not come close to the north side yard property line. The new porch, however, extends towards the north side of the building and the cottage itself is only 2.2 ft. from the north side yard property line. It would appear that the new expanded porch would also need an area variance. Based on the site plan filed with the application, the porch will be only 6.2 ft. from the north side yard property line.

Board members stated that at least a 4 ft. area variance would be needed. While this variance could be substantial, the house itself comes closer to the north side yard lot line than the new porch does. The next door neighbor to the north already has a letter on file supporting this project.

A motion was made by J.Bird and seconded by M.Steppe to deny the area variance application as applied for. The motion was carried with a poll of the board as follows: J.Hoffer-deny, E.Seus-deny, J.Crevelling-deny, M.Steppe-deny, J.Bird-deny.

The Property Owner then asked to amend his application requesting both a variance from the center of the road as well as a variance from the north side yard property line.

The board discussed the amended request and a motion was made by J.Bird and seconded by E.Seus to approve the area variance application as amended and to grant an 11 ft. variance or no closer than 34 ft. as measured from the center of East Bluff Dr. to the steps on the west side of the porch and a 4 ft. variance or no closer than 6 ft to the north side yard property line. This porch is to be left open with only a roof, not to be enclosed.

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

The motion was carried with a poll of the board as follows: J.Crevelling-grant, J.Hoffer-grant, E.Seus-grant, M.Steppe-grant, J.Bird-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 the locality.

Chairman asked board members if they had any suggestions regarding the way he had chaired this meeting. There were none.

OTHER BUSINESS:

Regarding the Zoning Court Case for 638 East Bluff Dr., no ruling yet from Judge Bender.

There being no further business, a motion was made by E.Seus and seconded by J.Crevelling to adjourn the meeting. Motion was carried unanimously (5-yes, 0-no) and the meeting was adjourned at 8:20 pm.

Respectfully submitted,
Elaine Nesbit/Secretary