

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

July 8, 2010

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, July 8th, 2010 at 7 pm by Chairman Glenn Herbert.

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

Others present included: Michael Ruth, Max Parson/Town Bd., Ed Pinneo/Planning Bd., James Zimmerman, Peter McCarthy, Judson McCarthy, Jeanne Francisco, Bill Francisco, Charlotte Wytias, and Gerald Kernahan.

A motion was made by E.Seus and seconded by J.Crevelling to approve the June Zoning Board minutes as written. The motion was approved unanimously (5-yes, 0-no).

COMMUNICATIONS:

Zoning Board members received copy of a letter signed by neighbors adjacent to the McCarthy Property having concerns with Application #968 and the request for an Area Variance. Copy on file with application.

A second letter of communication from Attorney Alan Knauf regarding application #968 was sent to the Zoning Board, but had not been received. Mr. Zerges had a copy (which was given to the Zoning Secretary to make copies for board members. Bd. members were instructed to mark received on 7-8-2010 (the same date that the letter was written) and having just received it at the Zoning Board meeting, on their respective copies. Copy of this letter is on file with the application.

VARIANCE/SPECIAL USE REVIEW

Application #965 for Michael Ruth owning property at 747 East Bluff Dr. requesting an Area Variance to build a 2 ½ bay garage on the west side of East Bluff Dr. with less front yard setback than zoning requires in the R1 zone.

Mr. Ruth was present to answer questions for board members and to briefly explain why he wanted to build the 2 ½ bay garage.

The Ruths will be moving here eventually to make this their year round home and they need it for storage and he would like to have an area to use as a workshop. Mr. Ruth stated that there were two reasons for requesting the area variance, one being that he did not want to have to remove a lot of trees that are located in this area, and also there is a substantially steep bank at this location which will have to have some excavation work done even if the variance is granted in order to get the garage built met the setback being applied for.

It was noted that this variance request is for a front yard variance of 35 ft. which would be 30 ft. as measured from the center of the road to the edge of the eaves on the garage roof. Mr. Ruth stated that he was aware of the fact that he would need to make an application for Steep Slopes review if the area variance is granted.

There was a brief discussion about the size garage and could the size be reduced and still be adequate for what they need. Mr. Ruth stated that he could downsize the garage if needed.

A concern was raised by one of the board members for safety of parking at this location and if there was sufficient room for parking and be well off the road. It was noted that if a variance of 35 ft. is granted, then Mr. Ruth could build the garage with a depth of 26 ft., depending on what is beneath the topsoil of the bank and how much expense there will be for the excavation into the bank.

It was noted by Chairman G.Herbert that there are other garages that have been built in this area and one in particular that is built into a bank that was solid rock formation.

The area variance test questions were read and answered as follows:

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: (0=yes, 5=no) There are similar garages along the road in this neighborhood that are built with a very similar setback as this requested area variance application.

2) Whether the benefit sought by the applicant can be achieved by some feasible method other than an area variance: (0=yes, 5=no). Not without greater expense and environmental issues for extensive excavation into the bank.

3) Whether the area variance is substantial: (4=yes, 1=no) The requested area variance would be substantial, but similar variances for garages have been given.

4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (5=no, 0=yes) this project will under go a steep slopes review for approval by the Planning Board.

5) Whether the alleged difficulty is self-created: (5=yes, 0=no)

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

A motion was made by J.Bird and seconded by G.Herbert to grant a 35 ft. area variance as applied for with the proposed garage to come no closer than 30 ft. as measured from the center line of the road to the closest point of the garage structure.

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

Application #967 for James Zimmerman owning property at 2026 Ingram Rd. requesting a Special Use permit to operate his woodworking shop as a facility for making kitchens and furniture by Customer order. A low impact wholesale business as an allowed special use in the Ag Res. Zone.

Mr. Zimmerman was present to describe the type of business he wished to have at this location and to answer any questions for board members.

It was noted that Mr. Zimmerman had recently purchased some property at this location to provide the required side yard setback for his woodworking shop, a new 40' x 70' structure. He will be building kitchens and other furniture by customer order.

When asked if he was going to have a retail area in his shop, Mr. Zimmerman stated that what he would have in his shop area would be more like a showroom for people wanting to see what the furniture that he is building would look like.

The Planning Board reviewed the short SEQR form for this application and based on their review a determination of negative impact was made. (Copy on file with application).

The Planning Board reviewed the Site Plan for this project and made a motion to approve the final site plan subject to the Zoning Board granting the special use permit. (Copy on file with the application).

It was also the recommendation of the Planning Board that this Special Use application be approved.

There is enough land at this location to provide for any parking space requirements.

When asked about a sign for his business, Mr. Zimmerman stated that he would be putting up a sign and would check with the Code Enforcement Officer about the zoning requirements for signs.

Chairman G. Herbert suggested that if there is to be any light on the sign that it be directed down onto the sign.

Mr. Zimmerman stated that his hours would vary depending on the work load and orders that needed to be filled. He would not be open on Sundays.

The waste products such as empty cans of furniture stains, finishes, paint cans, furniture oils, and other waste products will be picked up by a waste disposal company.

There being no further discussion, a motion was made by G. Herbert and seconded by J. Bird to grant the application for a special use permit for a 40 ft. by 70 ft. structure to be used as a woodworking shop to sell custom made kitchens and furniture.

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

Application #968 for Gerald McCarthy / Peter McCarthy owning a vacant lot on Esperanza Dr. in the Town of Jerusalem requesting an area variance to build a new single family home on a pre-existing, non-conforming lot in the R1 zone.

Mr. Peter McCarthy was present along with his engineer, Gerald Kernahan, to answer questions for board members.

Chairman G. Herbert stated for the record that anyone from the audience wishing to speak to this application, may be heard, but needs to keep their comments directed to the specifics of the area variance application which is the less than 75 ft. of frontage and the less than 20,000 sq. ft. lot size. The area variance does not concern the house, the leach field, or the engineering parts of this matter. Chairman G. Herbert then read a portion from the Zoning Code ordinance Article VI, Section 160-30 A.1(a) Pre-existing lot. When a person or persons own a lot of less than 20,000 sq. ft., they may apply for a permit to add to or construct a new structure if the total proposed dwelling and structures do not cover over 20% of the lot, can meet all the setbacks mandated and meet all the wastewater regulations.

There was some concern from board members about why the building permit was denied by the Code Enforcement Officer.

Chairman G. Herbert stated that although this lot is pre-existing, and does not meet the required 20,000 sq. ft. it was denied, in his opinion, because this lot does not meet the 75 foot frontage by 100 foot minimum depth requirement.

Chairman G. Herbert wished to separate this application into two parts and look first at the 20,000 sq. ft. requirement. G.Herbert made a motion that since this lot was in existence prior to zoning, an area variance for the minimum lot area is not required, provided that maximum lot coverage does not exceed 20% of the lot size; all required setbacks can be met and all wastewater regulations can be met. The motion was seconded by J.Bird and carried unanimously by a poll of the board as follows: M.Steppe-agree; J.Crevelling-agree; E.Seus-agree; J.Bird-agree; G.Herbert-agree.

The second part to this application concerns the minimum lot frontage of 75 feet. This is the issue that is before the board for consideration. The lot depth is well over the 100 ft. minimum requirement.

Board Member J.Bird asked the applicant if he could briefly explain what the intention for the use of this property was, when it was purchased. Mr. Peter McCarthy, a son of Mr.Gerald McCarthy, stated that his father had purchased this lot thinking it was a good opportunity to use it for his family and perhaps to have a chance maybe someday to build something on it.

Mr. McCarthy went on to explain that over time, as technology of septic systems began to change, the aerobic septic systems were developed and there was the possibility that a workable septic system could be put on this lot and if that were possible, it could open the door for other opportunities such as building a small house on this property.

Board Member J. Bird asked Mr. McCarthy when he took ownership of the property. Mr. McCarthy stated that it was after his father passed away in 2002.

Bd. Member J. Bird was concerned as to whether this makes a difference, that is, the fact that it is a different family member that now owns the property versus the owner that actually purchased the property in 1973 prior to the adoption of the zoning regulations.

Mr. McCarthy indicated that it was always his father's intention to someday build a home for his family on the property. Mr. Peter McCarthy stated that he has carried on with this same intention for many years, and has been trying to move this process forward.

Bd. Member E. Seus referenced Article XIII Section 160-56 C regarding non-conforming uses that may be continued if they were in existence prior to the adoption of zoning.

Bd. Member J.Crevelling referenced the letter that they as zoning board members had received from the adjacent neighbors to the McCarthy property. In response to statements made in the letter, Mr. McCarthy noted that if the only reason his father had purchased the property was to take his family swimming, he would have just taken them to the State Park.

Board Members discussed the fact that this property is a pre-existing, non-conforming lot with respect to size requirements in the R1 zone.

The allowed uses in the R1 zone allow for single family dwellings. The issue before the board regarding this property is not the requested use but the fact that the lot does not meet the minimum lot front requirement for the R1 zone. The fact that it was purchased prior to zoning and is still owned by the same family membership is another point for consideration.

There was further discussion regarding the parking space that is required for a single family dwelling and if this property actually has the adequate space.

Chairman G. Herbert again reminded the board members that they are to be looking at the minimum lot frontage and lot depth requirements. The other requirements that are required for a single family dwelling in the R1 zone are in place and must be met. These requirements are enforced by the Code Enforcement Officer.

Chairman G. Herbert noted that there is a statement in the Zoning Law which attempts to “grandfather” what was in place prior to zoning, and there are, in fact, many properties having 50 ft. of frontage more or less and that had or do have an existing building or dwelling on them.

These properties are allowed to remain or even to remove and replace on same footprint (without enlargement) provided they can meet the requirements as per Section 160-58 of Article XIII.

Engineer G.Kernahan noted that in his opinion, these properties should be looked at on a case by case basis. He stated, for the record, that this particular application, most of the other issues that need to be addressed have already been looked at, such as an approved septic system, steep slopes approval, site plan of dwelling that meets the required setbacks and does not exceed lot coverage. All of this at great expense to the owner of the property who thought he was following the proper procedure making sure he could meet the necessary requirements because he thought he would be able to build a home on this lot even though it was non-conforming for minimum lot width and depth, it was pre-existing.

Mr. Zerges asked to read the letter from Attorney Knauf to the Board Members but Chairman G. Herbert suggested that the letter be copied and distributed to the board (see Communications above). Copies were made and distributed. Board members took a few minutes to review the letter which basically examined the five test questions relating to the Area Variance requested and, in his opinion, how the questions as answered would be a basis for denying the area variance request.

Board Members proceeded to review the five test questions for themselves as follows:

1) Will an undesirable change be produced in the character of the neighborhood or cause a detriment to nearby properties: (4-no; 1-yes) Majority opinion is that an undesirable change will not be produced in the character of the neighborhood even though this pre-existing property has only 53 front ft. of width, but as noted it is pre-existing. Immediate adjacent properties to the south meet the 75 ft. width requirement. Adjacent lots on the north side have approximately 93 and 48 front feet respectively. In addition, there are several other similar or smaller lots with buildings already and they are located on this short dead, end road so adding another is neither substantial nor detrimental. The proposed building location appears to be well to the rear of the homes on the immediate adjacent properties and will be inconspicuous to the occupants of these buildings and will not be a detriment to their enjoyment of their properties while denying the applicant's request would certainly deny the same right.

2) Could the benefit sought by the applicant be achieved by some feasible method for the applicant other than an area variance: (5-no, 0-yes) The lot is pre-existing, non-conforming and there is no other available land to acquire and add on to this lot for building purposes.

3) Whether the requested variance is substantial: (4-yes, 1-no) Majority opinion is that this is a substantial request. A 75 ft. width is the minimum required and this pre-existing lot is 53 front ft. wide. The applicant is requesting an approximate variance of 33% of the lot width and a 50% variance of the required lot area sq. footage. It is noted however that in Article VI, Section 160-30 A (1) [a] there is no mention of a minimum lake shore lot width as a requirement for a pre-existing lot. To imply that the minimum width dimension should be met and adhered to in considering a pre-existing lot is to imply that the minimum lot width existed in the first place when in fact it did not. At best, 160-30 A 1(a) could be said to be ambiguous because a minimum lot width is not specifically mentioned and it is well established that any ambiguity of language used in zoning regulations must be resolved in favor of the property owner. Within five to six lots of the McCarthy property there are 50 ft. lots, and in fact there are many 50 ft. lots in existence on the lake.

4) Whether the variance would have an adverse impact on the physical or environmental conditions in the neighborhood: (2-yes, 3-no) There was some concern about the emergency vehicle situation for several of the properties on this road and parking area for the applicant as well as visitors, but the majority opinion is that there are already other similar smaller lots in this neighborhood so there will be no adverse affect by adding a home on this lot as stated previously. The applicant has addressed and met all the requirements in order to build on this lot including setbacks, steep slopes, and sanitary requirements. The environmental impacts will be minimal, managed and within acceptable limits.

5) Whether the alleged difficulty is self-created: (5-no, 0-yes) this property has been in the applicant's family, is pre-existing, but become non-conforming when the Town adopted zoning regulations.

Chairman G. Herbert stated that this is a very difficult decision and it is not a comfortable position for any of us including board members, the applicant and the neighbors. He stated his appreciation to both sides for their candor in regards to the issues.

Board Member M.Steppe stated that he would like to make a motion to table making any decision on this application until next month to have some more time review the application along with submitted letters and to consider the issues as presented with regards to this application. The motion was seconded by J.Bird and carried with a poll of the board as follows: G.Herbert-table, E.Seus-table, J.Crevelling-table, J.Bird-table, M.Steppe-table.

Chairman G.Herbert apologized to the Mr. McCarthy for the delay, but Mr. McCarthy was understanding of the board needing to have some extra time for review prior to making a decision. Chairman G. Herbert again reminded the board members that the area variance being considered deals with the minimum lot width for this property.

Chairman G. Herbert made a motion to close the public hearing for application #968 with the understanding that anyone wishing to speak to this application has been heard by being present or by letter. The board will make a decision concerning this application at the August Zoning Board meeting. The motion was seconded by J.Crevelling and carried with a poll of the board as follows: J.Bird-agree, E.Seus-agree, M.Steppe-agree, G.Herbert-agree, J.Crevelling-agree.

OTHER BUSINESS:

There being no further business, a motion was made by J.Bird and seconded by M.Steppe to adjourn the meeting. Motion was carried unanimously (5-yes, 0-no). The meeting was adjourned at 8:35 PM.

Respectfully submitted,

Elaine Nesbit/Secretary