

Approved

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

July 12, 2012

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday July 12th, 2012 at 7 pm by Chairman Glenn Herbert.

Roll Call:	Glenn Herbert	Present
	Jim Crevelling	Excused
	Ed Seus	Present
	Jim Bird	Present
	Dwight Simpson	Present
Alternate	Earl Makatura	Present
Alternate	Rodgers Williams	Present

Others present included: CEO John F. Phillips, Thomas & Virginia Yost, Patricia Loveland, and Karl Essler, Esq.

Chairman G.Herbert noted that the June Zoning Board minutes were very lengthy, probably the longest he had seen, but they covered the Board's reviews and determinations. A motion was made by G.Herbert and seconded by E.Seus to approve the June 14th minutes as written. The motion was carried unanimously (5-yes, 0-no).

COMMUNICATIONS:

A letter from adjacent neighbors regarding Application #1006 written to the Zoning Board was copied and provided to board members (copy on file with application).

VARIANCE/SPECIAL USE REVIEW:

Application #1005 for Joseph and Sonja Simpson owning property at 5142 East Bluff Dr. Penn Yan requesting an Area Variance to replace existing stairs, deck, gazebo, and retaining wall at lake side. All structures in existence prior to purchase by Joseph & Sonja Simpson. This property located in the Lake Residential Zone (R1).

This application was represented by Board Member, Dwight Simpson, son of Joseph & Sonja Simpson. Alternate board members, Earl Makatura and Rodgers Williams sat with the other board members for review of this application.

Mr. Simpson explained to board members that his parents purchased the property in August of 2000 from Mrs. Wilkins. He noted that at that time, the gazebo was actually over the property line to the north. They had to detach the gazebo from the deck so that it could be moved off the property line on to the property they were purchasing in order for the sale to go through.

The stairs have not had anything done to them in many years even prior to the Simpson purchase and they are now in such a state of disrepair that it has become a safety issue.

In reviewing the Town Office records, there do not appear to be any permits or area variances for the gazebo or the stairs. The question was asked as to when or how long the Wilkins may have owned the property and could these structures have been built there prior to the adoption of the zoning regulations.

Research of the assessment record's folder indicates that the Wilkins did in fact own the property prior to zoning and records show that the house was built long before the zoning ordinance went into effect, and most likely that the stairs for access were also in place as well as the gazebo long before zoning.

It was also noted that it was after the 1972 flood that there was erosion of the bank along East Bluff Dr. in this area and a lot of work was done to hold the bank and the road by putting in gabion baskets to prevent this part of the bank and road from sliding any farther towards the lake.

Mr. Simpson noted for the record, that in his conversations with the contractor for this project, it was suggested that in order to have minimal to no disturbance to the soil or embankment, they should build a second wall in front of the existing wall which would give additional stabilization to the bank and then replace the stairs, deck and gazebo with new material for safe access.

The board reviewed the area variance test questions with the following results:

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).

2)Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (0-yes, 5-no).

3)Whether the area variance is substantial: (0-yes, 5-no).

4)Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (0-yes, 5-no)

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

Based on a review of the Town records, the materials submitted by the applicant, and a discussion by the board members regarding these reviews, it was determined that these structures were more than likely built prior to the adoption of the zoning laws.

A motion was made by G.Herbert and seconded by J.Bird as follows: that based on the fact that the former owner of this property owned it long before the adoption of the zoning ordinance and based on the fact that no paperwork was found for any permits or area variance for the structures on the lake lot, it is the conclusion of the board that the stairs, landing, deck and gazebo were all built in their present location about the same time that the house was built which was about 1971.

It is therefore the determination of the Zoning Board that the Simpson's do not need any variance from them (the Zoning Board), only a building permit for the replacement of the structures on the lake lot that are there since they will be built in the same location pretty much as they were prior to zoning.

The motion was carried with a poll of the board as follows: G.Herbert-approve, J.Bird-approve, E.Seus-grant, E.Makatura-approve, R.Williams-approve.

Application #1006 for Patricia Loveland for property at 3907 Central Ave. Keuka Park requesting an appeal from a decision by a building inspector to lift a stop-work-order to finish off the 2nd floor (loft) area in a house built 30 years ago. The finished area to be made into two bedrooms. This property is located in the (R2) Residential-Public Sewers Use District.

Mrs. Loveland was present with her Attorney Karl Essler to present her application request and to answer any questions that board members might have.

Mrs. Loveland had given a copy of the deed for property at 3907 Central Ave. Keuka Park, to the ZAP Secretary (copy on file with application). It was noted by Attorney Essler that the deed is soon to be filed at the Yates County Clerk's Office.

Chairman G.Herbert noted that the Zoning Board of Appeals did not need to see the deed, that the Stop-Work-Order and Use Variance as well as any conditions of the Use Variance go with the property not the owner of the property.

Mrs. Loveland stated briefly that she had purchased the property approximately 5 months ago from the Mr. Farash's attorneys without knowing that there were any restrictions on this property.

Attorney Essler, stated that it was his understanding that in 1980 a Use Variance was granted to Mr. Farash to build a one story structure. The property owner then went on to build a story and a half and was issued a Stop-Work-Order by the Building Inspector/Code Enforcement Officer. This Stop-Work Order was issued because it violated the condition under which the Use Variance was granted.

The board members had paper work (copy on file with application) which gave the history of property as follows:

Year: 1978 - Application #186 for Use Variance for Farash Construction Corp. (Jalynn Corp.) to convert old run-down college dormitories into 4 apartment units and also to construct an additional (24) residential units of garden apartments. This use variance was granted with 12 conditions also noted as part of original use variance copy on file.

Year: 1980, Aug. - Application #204 for Amendment to Use Variance #186 is requested by Jalynn, Inc. - Max Farash to construct a 32' x 40' one story and basement storage maintenance building with living quarters for owner and family. Building to have Swiss Chalet exterior appearance and deck across front; Building to be built 20' from the north property line and 15' from the east line. This application ended up being withdrawn due to improper notification.

Year: 1980, Sept. Application #206 for Amendment to Use Variance #186, same as Application #204.

This application was properly noticed, went through proper procedure with one noted change. The amendment to Use Variance #186 was allowed by Mr. Farash giving up 4 units from the original Use Variance and the Chalet was to be built 20 ft. from the north property line and 15 ft. from the east property line. In addition, this building was not to be used as a rental property. Another condition of that Use Variance was that Mr. Farash had to sign and agree to those conditions in writing before a building permit could be issued. The decision granting this amendment was made on 12/10/1980 (copy of decision on file with application). A set of prints showing a one-story building on a full basement was filed with Application #206 when it was presented to the Zoning Board back in 1980.

After the building permit was issued, construction began, and continued until a Stop-Work-Order was issued by Building Inspector/Zoning Officer David Shipman. The Stop-Work-Order was issued because the construction company was building a structure that was a one and a half story on top of a full basement instead of a one story according to the agreed to building permit and plans accompanying the amended use variance application.

The Town brought a law suit (an injunction) against the Construction Company Jalynn and Max Farash, but it went back and forth between both parties each side both Plaintiff and Defendant moving to dismiss certain claims each had laid out against the other (Index No. 82-39 Town of Jerusalem Vs. Jalynn Inc., Farash Construction Corp., and Max Farash) copy on file with application. The end result is that Acting Supreme Court Justice Frederick D. Dugan granted all motions without costs with Defendants motion to dismiss the complaint as against Farash Construction Corp. is granted and Plaintiff to submit order (April 22, 1982).

Attorney Essler stated that this time line of events is essentially what he found when he had checked with the Yates County Clerk's Office and verified the information regarding the lawsuit and the fact that it was never decided. He noted that the interesting thing is that this building has remained with this upper loft area unfinished and unusable for 30 years. The Stop-Work-Order has remained in effect.

It was also noted by Attorney Essler that this property has now been purchased by his client who wishes to finish off this loft area and provide two bedrooms for when family comes to visit. This property is located in the R2 zone which allows for single family residential living. It is located on its own lot and meets the criteria for a conforming lot in the R2 zone. There will be no changes to the exterior of this building, all work and changes are to be made to the inside.

The question then becomes how to correct this problem of the Use Variance Condition that was agreed to and granted by the Zoning Board back in 1980. After a general discussion by the Zoning Board and Attorney Essler it was decided that the Zoning Board should motion to lift the Stop-Work-Order and then a motion to amend the Use Variance of #206 to allow for a change to the condition of a one story building on a full basement to a one and half story building on a full basement as a single family dwelling.

Chairman G. Herbert then reviewed the questions raised by the letter copied to the board from the adjacent neighbor to this property.

The answer to question three (what would have happened if Max Farash or Lynn Farash had wanted to build two bedrooms on the second floor five years ago) was speculative since neither Mr. Farash nor his daughter ever applied to the Zoning Board to change the conditions of the Use Variance granted in 1980.

The other questions were answered respectively.

The board was in agreement that there were no issues here with regards to lot size and the location of this building meets the conditions as required by the original use variance in that it is 20 ft. from the north side yard property line and it is at least a minimum of 15 ft. from the east side property lot line.

Chairman G.Herbert asked the board to go through the area variance test questions even though an area variance was not being applied for. The area variance test questions were read with the following results:

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).

2)Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (0=yes,3=no, 2=na).

3)Whether the area variance is substantial: (0=yes, 5=no).

4)Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (0=yes, 5=no).

5)Whether the alleged difficulty is self-created: (1=yes, 5=no), G.Herbert=no, J.Bird=no, E.Seus=yes, Simpson=no, E.Makatura=no.

It was noted that the conditions and requirements for obtaining the original Use Variance in 1978 had been met. The decision to grant Use Variance #186 was challenged in court, but the Zoning Board decision was upheld. The decision by the Zoning Board to allow Mr. Farash to build the 32' by 40' single story building on a full basement was done through application #206 requesting an amendment to the original Use Variance.

Attorney Essler stated that in his opinion his client should not have to re-establish and answer the Use Variance test questions, since these were already answered by the original Use Variance in 1978 then put to the test through a Court challenge and upheld. Single family homes are an allowed use in the R2 Use District.

A motion was made by G.Herbert and seconded by J.Bird to withdraw the Stop-Work-Order and to Amend Use Variance #206 changing the allowed one story and basement storage maintenance building with living quarters that was granted and amending it to the one and one half story and basement single family home that was built allowing the loft area to be finished off into 2 bedrooms as requested by the applicant.

This property having been subdivided from the original parent parcel in 1986 and now has its own conforming lot with the setbacks as required by the original conditions as stated in Use Variance #186. This lot being located in the R2 (Residential-Public Sewers)Use District.

The motion was carried with a poll of the board as follows: E.Makatura-grant, E.Seus-grant, J.Bird-grant, D.Simpson-grant, G.Herbert-grant.

OTHER BUSINESS:

There were concerns from the neighbor with regards to other conditions listed in the original Use Variance #186 one of which states there were to be no more buildings allowed to be built on the lot where Strong Hall Apartments were built in late 1979 and early 1980. It was noted that even though this use variance is over 30 yrs. old, the building permit #2005-57 issued to build a storage building on the Strong Hall grounds should not have been issued. CEO John F. Phillips stated that he issued the permit not aware that these conditions of the Use Variance were in existence. The property was still owned in 2005 by Jalynn Inc. when he received and reviewed the application for a building permit to build a garage type storage building. The parent parcel having the Strong Hall Apartments on it had split off the smaller parcel that had the controversial chalet on it. Since there didn't seem to be any issues surrounding the original parent parcel lot and it met the criteria for setbacks and building code requirements, a building permit was issued.

Another neighbor, Mr. Manley had concerns at the time, regarding the issuing of this building permit, but no one seemed to be aware of these specific Use Variance Conditions.

The neighbor stated that his concern is not so much with the building as it is with the fact that as it is now owned by Keuka College it is being used to hold conferences in this building and there are so many people around with no place to park. Cars are being parked along Central Ave. in front of Strong Hall along the road right-of-way and it has become a very dangerous situation. Many of the neighbors along this area are very concerned about this problem.

It was noted that residents from the Keuka Park area will be meeting with representatives from the College later in July and it was suggested by the zoning board members that this would be a good time to discuss these issues. Mr. Yost stated that he would be in attendance at this meeting.

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

Respectfully submitted,
Elaine Nesbit/Secretary

