

Approved

Town of Jerusalem
Zoning Board of Appeals

March 8th, 2018

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday March 8th, 2018 at 7 pm by Deputy Chairman, Rodgers Williams.

R.Williams asked all to stand for the pledge to the Flag.

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| Roll Call: | Glenn Herbert | Excused |
| | Rodgers Williams | Present |
| | Ed Seus | Present |
| | Earl Makatura | Present |
| | Joe Chiaverini | Present |
| Alternate | Kerry Hanley | Present |
| Alternate | Ken Smith | Present |

Others present included: Bridget O'Toole, Esq., Paul Kellar, Wendy Meagher, Justin Kellogg, Bob & Jill Decker, Doug Quade, Tom Close, Doug Thompson, William and Mary Fletcher, Joline Frey, Daniel Long, Yates County Planner, Jamie Sisson/Town Bd. , and Daryl Jones/Town Bd.

A motion was made by E. Seus and seconded by J.Chiaverini to approve the February Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS:

Letters were sent by email to Zoning Board members from neighbors regarding application 1121 (copies on file). A letter of support was received from an adjacent neighbor for application #1118 (copy on file). An email was received from Laurie Tappel requesting on behalf of herself and her sister and brother-in-law Julie & Christopher Hawk that their applications #1116 & #1117 for Area Variances be tabled until the April 2018 meeting.

AREA VARIANCE/SPECIAL USE REVIEW

Applications #1116 for Laurie Tappel and Application #1117 for Julie & Christopher Hawks for property at 12471 & 12473 East Bluff Dr. requesting Area Variances to subdivide the properties into two separately deed lots so that each dwelling will be on its own deeded lot.

A motion was made by R.Williams and seconded by E.Seus to table Area Variance Applications #1116 and #1117 until the April Zoning Board meeting as requested. The motion was carried unanimously.

Application #1118 for William and Mary Fletcher for property at 4540 West Bluff Dr., Keuka Park, NY requesting Area Variances to demolish an existing cottage and replace with a new lake cottage having almost the same footprint as the existing cottage, except for open decks on each end. The area variance request is for a rear yard setback of 27.2 measured to the center of West Bluff Dr. from the closest point of the proposed cottage and a setback of 7.9 ft. to the high-water mark as measured from the closest part of the deck that is located on the southwest front side of the home. The new lake cottage will meet the side yard setbacks on both sides and lot coverage is not an issue. This property is located in the Lake Residential Zone.

Justin Kellogg, PE from Meagher Engineering, was at the meeting to present the plans for Mr. & Mrs. Fletcher. He explained that the former cottage was pre-existed and that a permitted deck had been added, however, there was a part of the deck that became larger than what the building permit was given for, but this issue was being resolved by the removal of the existing structure and the replacement of the new lake cottage with new decks. CEO had met with the Mr. & Mrs. Fletcher last fall and discussed the replacement plans and what needed to be done to resolve the overbuilt front deck and this issue had also been discussed with the architect from Meagher Engineering.

There was one letter (copy on file) from a neighbor in support of this project.

It was also noted by Mr. & Mrs. Fletcher that they are selling their home in Rochester and moving down to the lake and making this their permanent, year round home. They have spent considerable time going over plans to make sure that this home would be the right fit for this lot and not be a detriment for the lake or the surrounding properties.

Board members had visited the site and had only questioned about the deck on the lake side of the home, but this is not at ground level but up at the first level above the lake level.

The area variance test questions were read and reviewed 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: (5-no, 0-yes).
- 2)Whether the benefit to the applicant can be achieved some other feasible method than an area variance: (5-no, 0-yes).
- 3)Whether the requested area variance is substantial: (5-no, 0-yes).
- 4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (5-no, 0-yes).
- 5)Whether the alleged difficulty was self-created: (3-yes, 2-no) R.Williams-no, E.Makatura-yes, E.Seus-yes, J.Chiaverini-yes, K.Hanley-no.

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

A motion was made R.Williams and seconded by E. Makatura to grant the Area Variance to allow the lake cottage to be built as per the application with the cottage including roof overhang to come no closer to the center of the road than 27.2 ft. or a variance of 17.8 ft. and no closer to the high-water mark than 7.9 ft. or a variance of 7.1 ft. as measured to the closest part of the proposed deck on the south side of the cottage with the note that these variances are given as per the drawing submitted with the area variance application as submitted for the March 8th 2018 Zoning Board meeting plan drawing C-2, with added condition that the decks are to remain open not to be enclosed by this property owner or any future owner of this property. The front area variance is from the deck not the wall of the lake cottage.

The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E.Seus-grant, E.Makatura-grant, K.Hanley-grant, R.Williams-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

Application #1119 for Robert Decker for property at 10030 East Bluff Dr., Penn Yan, NY requesting an Area Variance to build a new single family home with an attached deck with less setback from the center of the road than Zoning requires and requesting a setback from the north side yard property line having less than the required 10 ft. that zoning requires. This property is located in the Lake-Residential (R1) Zone.

Mr. & Mrs. Decker were present as was Brennan Marks, PE as the engineer representing Mr. & Mrs. Decker. Mr. Brennan gave the presentation to the board regarding the plan for the building of the single family home and noted that the deck on the front of the home was the closest part of the home that the variance was being requested for at 32 ft. from the center of East Bluff Dr. and the house being set-back at 40 ft. from the center of East Bluff Dr. Mr. Brennan also noted that there was a deck on the north side of the proposed home that they were requesting a 5 ft. variance from the north side yard property line.

Mr. Marks noted for the board that they have planned on several retaining walls to help retain the integrity of the area where the home is to be built. He noted that the proposed placement of the home is about as high as they want to go with it, since the higher they go to the west the steeper the slope becomes. He also noted that they are saving as many of the trees in this area that they can which will help to maintain the integrity of the hillside.

Mr. Marks noted that this property was reviewed by the Jerusalem Planning Board and Yates County Soil and Water for Steep Slopes and was given approval with conditions by the Jerusalem Planning Board.

A concerned neighbor adjacent to the north of this property was present with some concerns about the retaining wall that would be in close proximity to their property line as well as one large tree that they had concerns about it being cut down.

Mr. Decker was present and stated that anyone who is familiar with what happened in the Bluff area after the last snow storm when a lot of trees and tree limbs came down, that the idea of trying to save a particular tree that could eventually end up becoming a problem might better come down to begin with. This is the case with this particular tree that will have excavation done next to it and with some of the roots being compromised, it will not do the tree any good and therefore it should come down now rather than in the future after it starts to die and becomes a problem since it would lean towards the proposed house. The retaining wall on the north side will be approximately 3 ft. high, and is more of a landscaping type of retaining wall to again re-enforce the integrity of the bank. It does not require a building permit since it is less than 4 ft. in height.

The area variance test questions were read and reviewed 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: (5-no, 0-yes).

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

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

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (4-no, 1-yes). R.Williams-yes, E.Makatura-no, E.Seus-no, J.Chiaverini-no, K.Hanley-no.

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

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

There being no further discussion, a motion was made by K. Hanley and seconded by R.Williams to allow the single family home to be built with a front yard set-back from the center of the road to be no greater than 32 ft. as measured to the proposed deck on the front of the home or a 32.75 ft. variance with the distance on the north side of the home to be no closer than 7 ft. to the north side yard property line as measured to the deck on the north side of the home or a 3 ft. side yard variance. The condition for the deck is that it is to only have a roof over it and not to have enclosed sides. This condition is for this property owner and for any future owner of this property.

The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E.Seus-grant, E.Makatura-grant, R.Williams-grant, K.Hanley-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

Application #1120 for Yates County for property located at 4338 Skyline Dr. requesting an Area Variance to replace an existing tower that is approximately 30 ft. high with a 120 ft. tower to be used for inter-municipal emergency communication efforts and E-Communication by Yates County.

Dan Long, Yates County Planner, was present at the board meeting as the representative for Yates County, to present the proposed plan for the new tower and to explain the reason for the location of the proposed tower with respect to the Yates County property on which it is located and the need for the area variance.

Mr. Long had some additional maps, copies on file, that he had brought for the board members, that had been provided by Yates County Soil and Water Department that showed there were existing federal wetlands north of the existing tower site. In addition, upon further review of the soils in the area behind the currant tower site, it was noted by Yates County Soil and Water, that they are "hydric" basically meaning that they are subject to taking on water. If the proposed new tower site were to be moved to the west to accommodate the tower height, the hole that would be dug would just fill up with water like a pond.

The pine trees that were planted in the fifties in this location are good indication of what the soils are like since a lot of them are dying or have dyed out and will be falling over or have already fallen over.

In addition, if the tower site were to be moved to the south, it would put it too close to the adjacent neighbor's lot line and therefore the need to request an area variance to keep the replacement tower in the approximate same location as the existing tower. This would be a request of 60 ft. to the front yard lot line or 85 ft. as measured to the center of Skyline Dr.

Mr. Long provided a letter from Sabre Engineer, Robert E. Beacon, P.E., S.E. stating that the proposed tower, if installed correctly, should not fail (copy of letter on file).

Board members asked Mr. Long if a monopole tower had been considered. He stated that the County had looked into the cost of one but the "Grant Money" that they had been given for the update of their equipment and the cost of the monopole tower was prohibitive.

The tower being considered by the County is a self-supporting, trussed type tower not a guyed tower (based on Structural Design Report from Sabre Industries) submitted with the Area Variance application.

The area variance test questions were read and reviewed 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: (5-no, 0-yes).
- 2)Whether the benefit to the applicant can be achieved some other feasible method than an area variance: (5-no, 0-yes).
- 3)Whether the requested area variance is substantial: (4-yes, 1-no) R.Williams-yes, E.Makatura-yes, E.Seus-yes, J.Chiaverini-no, K.Hanley-yes.

4) Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (4-no, 1-yes) R.Williams-yes, E.Makatura-no, E.Seus-no, J.Chiaverini-no, K.Hanley-no.

5) Whether the alleged difficulty was self-created: (3-yes, 2-no) R.Williams-yes, E.Makatura-yes, E.Seus-no, J.Chiaverini-yes, K.Hanley-no

Board members were in unanimous agreement that this would be a SEQR Type II Action.

There being no further discussion, a motion was made by E. Makatura and seconded by J.Chiaverini to grant this area variance to allow the 120 tower as a replacement to the existing tower with a variance of 60 ft. to the front property line. It is noted for the record that this a self-supporting, trussed type tower (based on the letter from Sabre Industries) and due to the site conditions of the land that the County owns in this area, and the fact that this tower will be used for Yates County Inter-Municipal and Emergency Communications that this Area Variance is granted.

The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E.Seus-grant, K.Hanley-grant, E.Makatura-grant, R.Williams-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

Application #1121 for Jeffrey and Donna Spencer for property at 10193 East Bluff Dr., Penn Yan requesting Area Variances to build a new single family home on a lot located on the east side of East Bluff Dr. in the Lake-Residential Zone. The first area variance is for a set-back from the rear yard property line as measured from the center of the road to the closest part of the home which is the entrance on the west side of the home. The second request is for a retaining wall which is attached to the foundation of the proposed house and this retaining wall would be just outside of the road right-of-way.

Mr. Justin Kellogg, PE from Meaghar Engineering, was at the meeting to represent Mr. & Mrs. Spencer. He presented the plan for the home noting that the reason for the rear yard setback was to keep the new home back away from the bank towards the lake. His plan showed the topography indicating that the closer the home is moved towards the bank the steeper it gets. The requested rear yard variance would be enough to keep the home in an area that would not disturb the steeper area near the lake and therefore the integrity of the lake would not be compromised by the new home being built.

The house plan was downsized to fit and meet the required side yard lot lines and to help with erosion control and to negate storm-water runoff as much as possible.

Mr. Kellogg also noted that the reason for the retaining wall was to provide an area that could help to stabilize the road and provide an area that could be filled in to the south of the home and provide a space for parking and for entrance to the garage.

Mr. Kellogg provided a picture of a similar type of retaining wall that had been built just down the road from this property that has the same purpose as is being proposed for this property.

It was noted by one of the board members that there had been emailed requests from at least three property owners requesting that the review of this application be delayed for ninety days until these property owners would be back for the summer months. The application, however, had been filled out and all paperwork filed in a timely manner with letters to neighboring properties within 200 ft. having been notified by certified mail and therefore, the board did not find a reason to delay review of this application. Copies of email requests and concerns on file.

Tom Close, former President of The Bluff Point Association, had been asked by one of the neighbors down the road from this property, who does not live here in the winter time, to come and speak at the Zoning Board meeting on their behalf as to their concern regarding this application.

The concerns included the following: storm-water runoff and erosion into the lake from the building site, proposed building is too close to the road, buying a lot knowing what the lot is and then having to ask for an area variance because the setbacks can't be met is considered by the neighbor to be a self-created hardship. Other concerns were the view of the lake by the neighbor to the south being taken away and wild life access to the lake. Mr. Close had a meeting with the Bluff Point Association Board of Directors and it was agreed that the Bluff Point Association was not in favor of the granting of this Area Variance and was in agreement with many of the same concerns as some of the neighbors of this property. The Bluff Point Association also stated that there are regulations for set-backs in the zoning code for a reason and while some of the area variances granted are fine many are not so fine.

Bridget O'Toole, Esq. from The Zoghlin Group PLLC, was present to represent another neighbor that owns property that is several cottages south of this property. Ms. O'Toole had sent a letter (copy on file, on behalf of her client, to the Zoning Board members, prior to the meeting, citing the concerns for why the zoning board should deny this area variance application and its requests.

She also spoke of her client's concerns with regards to the view of the lake being impaired, the pedestrian traffic up and down the road in this area particularly around the Sheriff's Camp being affected by the granting of this area variance.

Ms. O'Toole spoke to the board briefly outlining the contents of the letter and mentioned that she did not think the applicant had shown the burden of proof as to the environmental issues that the zoning board needed to consider. She spoke to the fact of Town Law 267-b (3)(b) whereas the Zoning Board needs to weigh the adverse environmental impacts.

The Zoning Board does go through the five Area Variance test questions prior to considering their motion for each area variance application that they review.

There was a discussion as to whether the applicant should apply for Steep Slopes first or apply for the Area Variance first.

It was noted that it is a decision of the applicant and their representative to decide what application should be applied for first and since there is much expense involved in applying for Steep Slopes review (engineered plans, etc.) that if an applicant were to apply for this first, then get denied when they apply for an Area Variance, they have spent considerable amount of money on a Steep Slopes Plan for nothing.

Usually, in the case of the steep slopes plan, things can be worked out by mitigating conditions and everything can be worked out so that plans can go forward. That is not always the case if an application for area variance is denied.

Zoning Board members noted that in the case with this application that some of the issues brought up tonight as being concerns of the neighbors will be addressed by the steep Slopes application that will be going to the Jerusalem Planning Board for the April Planning Board meeting.

It was also noted by Mr. Kellogg that the applicant may not be adding all the retaining walls on the west side of East Bluff Dr. as was originally planned, they may change their area of parking. That discussion is for another board and at another time.

Another neighbor that lives nearby spoke with regards to this application, stating that his family had lived in this area for many years. He felt that there are too many area variances granted and too many properties that are being divided into smaller lots. There are only so many larger properties left and once they are gone then there is no way to get them back. There are steep slopes to contend with which makes for issues that have to be dealt with. If lots are split into conforming lots then the homes that are built on them should meet the required setbacks that the zoning requires without having to ask for area variances in order to make the homes fit in.

The area variance test questions were read and reviewed 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: (3-no, 2-yes) R.Williams-no, E.Makatura-no, E.Seus-yes, J.Chiaverini-yes, K.Hanley-no

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

3)Whether the requested area variance is substantial: (2-yes, 3-no) R.Williams-no, E.Makatura-no, E.Seus-yes, J.Chiaverini-yes, K.Hanley-no.

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (4-no, 1-yes). R.Williams-no, E.Makatura-no, E.Seus-no, J.Chiaverini-yes, K.Hanley-no.

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

There was no further discussion and the board was in unanimous agreement that this is a SEQR Type II action.

A motion was made by R.Williams and seconded by K.Hanley to grant the Area Variance to allow the single family home to be built with a rear yard set-back from the closest part of the house to be no more than 34.8 ft. as measured to the center of East Bluff Dr. from the entrance part of the home including the roof overhang; and the retaining wall that is attached to the house foundation to have no rear yard setback but to be out of the road right of way at 24.75 ft. as measured from the center of East Bluff Dr. to the retaining wall.

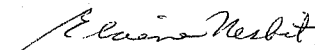
The motion was carried with a poll of the board as follows: J.Chiaverini-deny, E.Seus-deny, E.Makatura-grant, K.Hanley-grant, R.Williams-grant.

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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

OTHER BUSINESS:

There being no other business before the board, a motion was made by K.Hanley and seconded by E. Makatura to adjourn the meeting. The motion was carried unanimously.

Respectfully submitted,


Elaine Nesbit/Secretary