

Approved

Town of Jerusalem
Zoning Board of Appeals

August 9th, 2018

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, August 9th at 7 pm by Chairman Glenn Herbert.

G. Herbert asked all to stand for the pledge to the flag.

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

Others Present included: Jeff Arnold, Bill & Kathy Neilsen, Chuck Smith/Design Works, Greg Lechner, Steve McMichael, Jamie Sisson/Town Bd., and others.

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

COMMUNICATIONS: Board members had received 2 emails in support of Area Variance application #1137 (copies on file).

At the July Zoning Board meeting the Zoning Board made unanimous decisions to review two Zoning Board Applications (#1128 & #1132) which came before the Zoning Board in June for Public Hearing; were reviewed and subsequent determinations and decisions were made in both cases.

AREA VARIANCE/SPECIAL USE REVIEW:

Application #1128 for Dan Grace and Kara Eastwood for property located at 7675 East Bluff Dr., Penn Yan, NY requesting an Area Variance to build a two-story addition on basement to an existing building with less rear yard and front yard setback. This application, which was denied at the June meeting, has an Area Variance that is still in existence that goes with the property that was granted in 2014 by a prior Zoning Board. Since the former owners of the property did not take out a building permit to start their addition that was granted by their area variance, then it is still valid, because the area variance goes with the property not the owners. This property is located in the Lake-Residential (R1) Zone.

Chairman G.Herbert stated that this information had been given to us by our Town Attorney. Therefore, based on the new information regarding the former approved Area Variance and the unanimous decision in July to re-open this application, Chairman G.Herbert stated that the board would review the test questions for area variance #1128.

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: (1-yes, 4-no) G.Herbert-no, E.Seus-no, J.Chiaverini-yes, E. Makatura-no, K.Hanley-no.

A motion was made by G. Herbert and seconded by K.Hanley to approve Area Variance application #1128 to allow a 2-story 16 ft. by 24 ft. addition on a basement with a single story 6 ft.8 in. x 24 ft. porch on the lake side with the rear yard setback to be no closer than 39 ft. 8 ½ in. as measured from the closest part of the proposed structure (including roof overhang) to the center of East Bluff Dr. and the front porch to come no closer to the high-water mark than 13 ft. 7 in. as measured to the closest part of the porch (including roof overhang) to the high-water mark which is the edge of the breakwall.

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

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

This decision will over-ride the former decision that was filed on June 14th, 2018.

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 #1032 for Michael Quinn for property located at 3003 West Lake Rd., Penn Yan, NY having applied for an Area Variance in June to replace a deck that had been built by a prior owner with a building permit but no area variance had been applied for. In granting the area variance there was a miscalculation of the lot coverage and a 31% lot coverage was granted when it should have been 33.5% lot coverage. The contractor who re-built the deck was not the same contractor that removed the original deck which led to the discrepancy of the size of the deck and the percent of lot coverage. The board had unanimously voted to re-open this application at their July meeting in order to re-visit the lot coverage calculation. This property is located in the Lake-Residential (R1) Zone.

Chairman G. Herbert asked board members if they had any questions about the re-calculated lot coverage before going over the area variance test questions. No one had any questions or concerns.

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: (3-no, 2-yes). G.Herbert-yes, E.Makatura-yes, E.Seus-no, J.Chiaverini-no, K.Hanley-no.

3)Whether the requested area variance is substantial (0-no,5-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: (1-yes, 4-no) G.Herbert-no, E.Seus-no, J.Chiaverini-no E. Makatura-yes, K.Hanley-no because it was existing.

A motion was made by G.Herbert and seconded by E.Seus to grant the area variance for the replacement deck with a lot coverage of 33.5 % which will correct and over-ride the decision made by this board at their June 14th, 2018 meeting.

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

The board was in unanimous agreement that this was 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 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 #1137 for William Neilsen for property at 3720 West Bluff Dr., Keuka Park, NY to request an Area Variance to remove an existing one and one half story portion of a pre-existing, non-conforming house and move back 3 ft. 6 in. back and replace that part with a new 2-story addition. The one story portion of the home would remain in the current location. This one story portion is also part of the pre-existing, non-conforming structure and extends slightly over into the road right-of-way. This property is located in the Lake-Residential (R1) Zone.

Chairman G. Herbert started out the public hearing with a statement regarding this application that this property has a pre-existing, non-conforming building as per the Zoning Code. The Code is very specific in this regard about expanding on a pre-existing, non-conforming building that it shall not be enlarged, extended, or increased unless such enlargement would tend to reduce the degree of non-conformance.

The guidelines as set forth by the Attorney for the Town has given guidelines similar to those as stated above for the Zoning Board to go by for a similar application. This is not the first application that the Zoning Board has reviewed and made a determination for similar reasons.

J.Arnold, who was present with Mr. & Mrs. Neilsen, spoke noting that he had received at least 2 or more area variances for his property and noted that there were several other properties on the lake that had received area variances similar to what the Neilsens were asking for. Mr. Arnold had several photos that he showed the board of properties that had similar situations like the Neilsens.

G.Herbert stated that he was not familiar with the photos and would not comment on them as the board did not have all the facts concerning those properties. He also noted that there wasn't any supporting documentation as to whether Area Variances had or had not been received for those properties. In addition, he noted that each application that comes before the board is reviewed and decisions are made based on the merits of each individual property.

There were two emails (copies on file) from neighbors, adjacent to the Neilsens, that had been sent in to the Zoning Board that were in support of this project.

There was a concerned citizen that spoke about the CEO asking for architectural drawings for this project and the applicant spending money to secure these drawings only to be turned down on the application request. It was noted, however, that design drawings are not required for Area Variance applications, but hand drawn or sketch drawings can be submitted for this process.

There were comments from others in the audience that the zoning code needed to be changed since there seemed to be some area variance applications that have been granted in the past while others have not been granted. It was noted again that each application that comes before the board is unique to its own situation. Chairman G.Herbert stated again, that if the applicant does not agree with the Zoning Board's decision they have the option of appealing the Zoning Boards decision.

A motion was made by G.Herbert and seconded by K.Hanley to close the public hearing for application #1137. The motion was carried unanimously.

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: (4-yes, 1-no). G.Herbert-yes, E.Makatura-yes, E.Seus-no, J.Chiaverini-yes, K.Hanley-yes.

3)Whether the requested area variance is substantial: (5-no, 0-yes) E.Seus stated that in his opinion, outward expansion is more substantial than upward expansion.

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: (5-yes, 0-no) G.Herbert-yes, E.Seus-yes, J.Chiaverini-yes, E. Makatura-yes, K.Hanley-yes.

Based on the test questions the replacement of the 2-story addition would not have an adverse effect or impact on the environment, however, based on the fact of the continuance of pre-existing, non-conforming, the new 2-story addition would have added volume and be built back onto the pre-existing, non-conforming single story portion of the home thus expanding what was previously there.

A motion was made by G.Herbert and seconded by E. Makatura to deny the Area Variance Application #1137 for 3720 West Bluff Dr. to replace the one and one half story portion of the cottage with the new full 2-story addition based on Non-Conforming Uses, Article XIII, Section 160-56 B & C .

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

Application #1138 for Gregory Lechner for property at 346 Crescent Beach, Branchport, NY requesting an Area Variance to remove and replace the existing cottage with a new single family home with the new home exceeding the allowed lot coverage by 2.25% also requesting a side yard and rear yard set-back from what zoning requires for a lot located in the Lake-Residential (R1) zone.

Mr. Lechner was present to answer questions for board members and to talk about his proposed application.

Mr. Lechner stated that the old cottage was going to be removed as was the old garage and replaced with the new home and new garage.

Mr. Lechner noted that his garage would be attached to his new home and he was asking for a variance from the west side yard setback of 2 ft. 3 in. and a rear yard set-back of 11 ft. 7 in. with a lot coverage increase of 2.23%

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-yes, 0-no).
- 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: (5-yes, 0-no).

A motion was made by G. Hebert to grant the Area Variance application as requested with the new home and attached garage to come no closer to the west side yard property line than 8 ft. 9 in. and no closer than 11 ft. 7in. to the center of the traveled way, all measurements as taken from the closest part of the structure including the roof overhang. The total lot coverage of all the buildings not to exceed 22.25 %. The motion was seconded by E.Seus and carried with a poll of the board as follows: J.Chiaverini-Grant, E.Makatura-grant, K.Hanley-grant, E.Seus-grant, G.Herbert-grant.

Board members were in unanimous agreement that this was 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 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:

A motion was made by G.Herbert and seconded by E.Makatura to request the Planning Board to be the lead agency for the SEQR review for Lyonsmith Brewing Co. LLC for their Application for Site Plan and Special Use at the October Planning Board and Zoning Board Meetings respectively.

The motion was carried unanimously.

There being no further business before the board, a motion was made by G.Herbert and seconded by E.Makatura to adjourn the meeting. Motion was carried unanimously and the meeting was adjourned.

Respectfully submitted,

Elaine Nesbit/Secretary