

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

May 11, 2023

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday May 11, 2023 at 7 pm by Chair Rodgers Williams.

The meeting opened with everyone standing for the pledge to the Flag.

Roll Call	Rodgers Williams	Present
	Randy Rhoads	Present
	Earl Makatura	Excused
	Lynn Overgaard	Excused
	Steve Schmidt	Present
Alternates	David English	Present (voting)
Alternates	Donald Wright	Present (voting)

Others present included: Daryl Jones-Town Board liaison. Bill Gerhardt-Code Enforcement. Jim Bird, Sal Licciardello, Angelo Licciardello, Jim Connolly.

A motion was made by **S.Schmidt** seconded by **R.Rhoads** to approve the April Zoning Board minutes as written. The motion was carried unanimously.

**COMMUNICATIONS:**

Four letters of support from neighbors regarding Area Variance **App #7-2023**.

**AREA VARIANCE/SPECIAL USE PERMITS:**

Area Variance request from Jim Connolly **App #7-2023**. 8231 E. Bluff Drive. Applicant is present.

Applicant sent letter to Zoning Board members regarding project. As well as CEO **Bill Gerhardt's** communication.

There was a misunderstanding, not knowing if an Area Variance was needed. Applicant **J.Connolly** stopped construction immediately after receiving word that a variance was needed. He apologizes to the Board. He asked if he needed it and at the time was told no, therefore he proceeded with construction. The Variance request is 7-foot covered entrance way for a dormer.

Alternate **D.Wright** asks how there was a misunderstanding.

**J. Connolly** responds he told a variance was not needed when he sent in the original sketch. Agreeing that only a building permit was required, a year prior to construction. Started the project then received phone call that he needed an Area Variance.

**Vice Chair R. Rhoads**- Asks if the original building permit had a drawing with it.

**J. Connolly** states it was more of a sketch than a drawing, that is where the misunderstanding came from and he takes ownership of it.

**R. Rhoads** – it was your intention to put a dormer in the entryway from the beginning?

**J. Connolly** -Yes that's correct, my theory of a dormer entryway may have been different. He states he would have gone through the Variance process. He wants to make his residence full time at the lake and needs an office space. He relayed that many letters were sent in support.

**Chair R. Williams**- Inquires if the stairs are going up outside, under the dormer.

**J. Connolly** responds, they come from the West to the back side of the 7-foot deck. You won't see them from the road.

**R. Williams** asks how he will get around to that.

**J. Connolly** – Answers there is a driveway he accesses to that whole second level, he has been parking there all week. Deck is not very large and the stairs are on the backside to make it more appealing.

**D.English** – Asks what is status of the situation, is the garage itself a variance.

**J. Connolly**- The garage roof overhangs the right of way, makes it nonconforming.

CEO **Bill Gerhardt** adds it was a variance that was approved many years ago.

**D. English**- The garage exists where it is in accordance with a variance.

**R. Williams** states it looks like the front end of it is in the right of way. CEO **Bill Gerhardt** adds that right or wrong it was approved years ago.

**J. Connolly** states there are two different driveways. He is speaking of the driveway to the North, which is how he will access the dormer. The driveway to the South is the one that just got approved after being in litigation with the town for five years. Which is why is moving the entrance to the other side of the building.

**R. Williams** asks if any other board members have comments. No comments.

Vice Chair **R. Rhoads** makes a motion to open the public meeting.

Resident **Sal Licciardello** introduces himself. He is an attorney, as well as his parents live next door to applicant, owning two properties to the South of applicant.

He has become familiar with the property over the years. **Joyce Witker** back in 1989 came to the ZBA to get a variance to the build that garage. They did not have enough space to build one. The ZBA in 89' issued a variance to build a 26' x 24' garage out of the right of way.

In 1991 she applied for a building permit to build something bigger, 24' x 32'. It was 6.5 feet bigger than what the ZBA had allowed. That went up sometime in the early 90's.

**S. Licciardello** give copies of the 1991 Zoning Board minutes to members.

He continues stating that back then, there was some misunderstanding because the CEO granted the Building Permit to build bigger, which never should have happened.

Fifteen years later it was discovered that the building was nonconforming. The ZBA at that time had to consider if they should make Joyce Witker tear down part of the garage or modify area variance to let her keep it. It was a little unique because she was relying on the building permit being issued.

Removing the garage would have involved sawing the wall and jackhammering the foundation, it would have been a significant undertaking.

They ultimately modified the area variance to let that garage stay, even though it was nonconforming. At that time there was a couple issues raised by the board members. One of them was asking what was going on upstairs in the second floor, her attorney **D. Schnieder** said nothing. The second question raised by the Chairman back in 2006 was what kind of precedence does this set, allowing a building against code. Property builds it and then comes back after the fact. Back for forgiveness instead of ask for permission.

**S. Licciardello** continues that he thinks that is an important consideration here and also how many times will this board allow this same garage to get a variance? Where does it end? As a matter of policy, the board should limit the variances. They are worried how much more it can expand. This the third variance allowed. He is worried about what kind of precedence that sets for everyone in the town.

He does not think that just because the applicant is substantially almost done with construction that they should be a factor. This excuse should not work again. He is also concerned with the use as an office. The board should consider what else that entails, will there be more traffic.

**S. Licciardello** relays that applicant **J. Connolly** had complained at their Zoning Board hearing that it is dangerous, it is so close to the right of way. People are traveling at 35 mph right in front of it. Will there be an increase in foot traffic?

Expanding a nonconforming structure is generally frowned upon, unless there is a compelling reason to do so. Is it necessary? Does it accomplish anything, it is 7 feet larger than what the ZBA had modified it to be 2006.

The board also needs to consider it is partially in the road right of way. It is a factor. Potentially you could have people waiting or hanging out in the road right of way, granted it's on the second floor.

**R. Rhoads** inquires if there is an area coverage concern. **J. Connolly** responds that they are well within the coverage.

CEO **Bill Gerhardt** responds that it did not require a lot coverage variance.

**J. Connolly** addresses some of the concerns of the **Licciardello's**. This particular issue is not in the town right of way, it's far back. It's an entryway, a covered entryway. It could have been concrete but did not want to block the flow of water from the hillside and decided to make a deck.

**R. Williams** – confirms the nature is a home office.

**J. Connolly** confirms it is a home office. It is his office, there will be no one in coming. It will be his space to work. Not a public office. They do have guests visiting in the summer, and he needs to be able to get away to work. There will be no water or plumbing.

CEO **Bill Gerhardt** confirms home occupation in itself is for items of that nature, that don't bring in clientele or change the neighborhood.

Neighbor **Angelo Licciardello** states that this isn't really needed because you can still access the structure without this? It is just an added benefit, asking **J. Connolly** if he is correct. That he could still access the structure without it.

**J. Connolly** responds that they would have accessed it from the South side. **A. Licciardello** he states as where it stands now, could they still access it. **J. Connolly** says yes, sure they could. **A. Licciardello** adds that if he built it the way it was presented to the board the first time it could still work. He doesn't need the variance; he just wants it.

**R. Rhoads** inquiries about the other entry. **J. Connolly** responds that the other entry to the South side was not safe because as they came out of there they were face with the traffic in the right of way. That door is still there, but the stairs that used to go up there have been closed off. He cannot use that door to get the second floor any longer.

**D. English** – confirms there was stairs there on the South East corner.

**J. Connolly** answers when they purchased the house you came in the South East corner and went upstairs to the second floor. The concern was moving the entrance to other side so they were not so close to traffic from the driveway to the South.

**R. Rhoads** states that J. Connolly brought the property with the garage in its current situation.

**J. Connolly** said yes in 2016, and he always had the intentions of putting in a home office there from the beginning.

**D. Wright** confirms that the residence is across the street. **J. Connolly** answers yes.

**Angelo Licciardello** asks **CEO Bill Gerhardt** if **J. Connolly** could still access the upstairs without that variance, correct?

CEO **Bill Gerhardt** says in theory yes, he could still access but it provides for easier access.

**R. Williams** asks if there is any more questions or comments, with no further comment **R. Rhoads** motions to close the public comment. **D. English** seconds.

The board answered the 5 area variances questions.

**1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the Area Variance?**

R. Williams – No.

D. English-No, the direction of the variance is North and incorporated in applicant's property.

S. Schmidt – No, he doesn't see a problem with the variance.

R. Rhoads-No it is keeping with the rest of the neighborhood.

D. Wright-No, nothing undesirable.

**2. Can the benefit sought by the applicant by some method, feasible for the applicant to pursue, other than an area variance?**

D. Wright- No, unless South area is retained. There is a safety issue that overrides.

S. Schmidt- Yes, could be done a different way.

D. English- Yes, it could be achieved by an interior set of stairs. Could feasibly done a different way.

R. Williams- Yes, there is another alternate, but not a safe one.

R. Rhoads- Yes, the applicant would like to have access to the second floor, building is large. There is plenty of room for stairs to get access up there.

**3. Is the requested Area Variance substantial?**

R. Rhoads- Yes, it is a pretty good size variance.

D. English- No.

S. Schmidt- Yes, he agrees with Randy.

D. Wright- Yes, agrees with Randy.

R. Williams- No, considering the location of the dormer too close to the road right of way.

**4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?**

D. English- No, the conditions are addressed in a manner in which the property is constructed. It's entirely outside of lot yard.

R. Williams- No.

D. Wright- No, adverse effect that he sees.

R. Rhoads- No, it will look great and function just fine.

S. Schmidt- No.

**5. In the alleged difficulty self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the Area Variance?**

S. Schmidt-Yes.

R. Williams- No, the lot was there years ago and shouldn't have been approved.

D. Wright- No, safety issued was not self-created.

D. English- No, he hasn't changed the property since he purchased it.

R. Rhoads- Yes, he could have found another way to accessed the second floor.

**R. Rhoads** makes a motion approve the request for a 36-foot setback from the center of the road where 64.75 feet is required. **D. English** seconds.

**R. Rhoads** adds that they board is not present to talk about the past variances, and they understand there has been a lot of issues with that garage. It has added challenges between neighbors, the board never likes to see that. They are not there to talk about the history but the new variance. In his mind that the reason that there is the 64.75' setback from the road is primarily for safety, and for snow removal. Those are the primary reasons for the setback.

**R. Williams** adds that the lists go on for the reasoning of the 64.75' setback. On the lake side it is only 44.75.' The primary concerns are to have room to clear the road. Reiterates they will not go into the old variances. The expansion is not adding to those problems. It is well out of the road right of way.

**R. Rhoads** agrees it does not create a safety problem. The board looks at each Area Variance individually, not necessarily with all of the history.

**S. Schmidt** adds that the board needs to make a vote based upon now and the future of the property.

**D. English** states the previous activity of the ZBA apparently was done before Zoning law was in place and procedures were addressed, and decisions were made. Even if this were a nonconforming use, there are limitations in the Zoning laws on how much it can be expanded and this is well within that. Yes, it's not necessarily to keep variances on a property one after another. This is 10' above the road besides not being in the road right of way. It is not where snow plowing or paving will happen. Given the property and its status, he thinks it's well away from any potential problems.

**R. Rhoads** adds that on the other hand construction something that requires a variance should never happen.

**J. Connolly** states he agrees.

**R. Rhoads** that they are disappointed that the structure is already in place, at least started and that should have never happened. Everyone has public access to the Zoning Law; you can interpret yourself if a structure or a modification of a structure need a variance. If you ever have a question or concern you can call the CEO.

**R. Williams** adds that the town board is considering a modification to increase the application fee as a deterrent for those who start construction without proper paperwork.

Town Board Member **J. Bird** answers that yes, they have increased the fee for building without a permit or extending the permit. But have not yet for variances. Hopefully they will be setting up a committee to discuss.

**J. Connolly** adds that they got the permit over a year ago and had plenty of time to go through the proper channels if they were told they needed to. That is the disconnect.

**R. Rhoads** adds that residents still need to read the Zoning laws themselves. That is not reason enough. Neighbor **A. Licciardello** wants assurance that the applicant is not exceeding the lot coverage, he states the garage is huge. And the lot is not that big.

**R. Rhoads**- He does not have that information. He adds they can call the vote or table until next month when we have the area coverage calculated.

**Chair R. Williams** answers that they can call the vote, the board has been assured that it is fine.

**CEO Bill Gerhardt** adds that it is not even close, he can check it.

The board was polled as follows:

D. English- grant

D.Wright- grant

R. Williams- grant

S. Schimdt-grant

R.Rhoads-grant

Applicant **J. Connolly** thanks the Zoning Board and apologizes that construction started before he knew about the variance. He would of happily went through the process and paid the fees.

**B. Gerhardt** clarifies that **J. Connolly** did just that. Stopped work, and applied for variance.

OTHER BUSINESS:

**R. Williams** relays the Tree Top Cidery case. **D. English** explains that the board denied the Special Use permit. The applicant filed article 78 proceedings to challenge that denial. It has been pending and continual adjournments. They have withdrawn the case. The case has been dismissed without prejudice. This means the 30-day statute of limitations no longer applies to them. They are applying for a ruling from the division of Ag and Markets that are Zoning law is unreasonably restrictive for them. Farm and farm activity. The board has a right to respond to this, and defend the Zoning law that applies to the entire town. The town has an attorney to respond to this.

**R. Williams** adds that a Use Variance application may be on the agenda in the upcoming months. Reminds members to study up on Use Variances.

Next meeting is Thursday June 8, 2023.

There being no further business, a motion was made by R. Rhoads and seconded by **S. Scmmidt** to adjourn. The motion was carried unanimously and the meeting was adjourned at 7:52 pm.

Laura Swarthout/Zoning Secretary

