

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

June 8, 2023

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday June 8, 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	Present
	Lynn Overgaard	Present
	Steve Schmidt	Excused
Alternates	Don Wright	Present (voting)
Alternates	David English	Excused

Others present included: Daryl Jones-Town Board liaison. Bill Gerhardt-Code Enforcement. Jim Bird. Linda Patrick, David Patrick, David L. Patrick, Mark White, Ferlin Horst, Peter Budmen, Jim & Jan Widboom, Jane & Steve Lieberman, Virginia Goyer, Allison Stewart, Tom Kiefer, James Schwartz. Unidentified individual.

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

COMMUNICATIONS:

None

AREA VARIANCE/SPECIAL USE PERMITS:

Special Use request from Ferlin Horst **App #9-2023** to put in a dog kennel at 2755 County House Road Applicant is present.

Applicant is requesting a small dog kennel to raise eight Pure Breed dogs; plan is to breed miniature dachshunds, maybe a few Yorkshire Terriers.

The kennel will be a new concept, the construction will help lessen the noise. **F. Horst** toured a kennel with same structure, he was impressed with the concept.

The dogs will not all be visible to one another, this will help dogs to be relaxed and quieter.

Chair R. Williams inquired about the compost. **F.Horst** responded, it will be disposed behind the brown barn on the property. It is the back edge of the field, over 300 feet down the property.

D.Wright asked how many dogs, five. **F. Horst** answered eight dogs.

R.Rhoads asked how many dogs applicant currently has. **F.Horst** – one grown female.

Board member **L.Overgaard** confirmed that the kennel construction has not begun. **F.Horst** answered, no he wanted to wait until approval from Zoning Board.

R.Rhoads asked **F.Horst** how the design of the kennel will lessen the noise.

F.Horst relayed that the design is a unique construction method. It is a storage shed like structure with a well in the middle, dogs are in five-foot rounds. Only two dogs in one pen, they will not all be able to see each other. Not as much visual contact will lessen the noise. The pens will include air condition and heating.

D. Wright inquired about question number 10 on the (SEQR) Will there be connection to the water supply, **Ferlin's** response only refers to waste water.

F.Horst answered he will be providing private fresh water from his well. **D.Wright** responds he should have answered no.

R.Williams asks if any other board members have questions.

Residents **Jim and Jan Widboom**, residing at 2806 County House Rd, asks the board to define what a kennel is. Will there be breeding and boarding. And also concerned about the noise. There is also run where dogs will be outside making noise. Husband **Jim Widboom** adds they are probably the closest neighbors to Ferlin.

R.Williams answers that the kennel is just breeding.

Jan Widboom states she highly objects if the kennel can transition into a boarding facility as well.

R.Rhoads states that both uses a breeding and boarding kennel are allowed in this area.

Jim Widboom stated that if there are 8 breeding females on site and each dog has 5-6 puppies, there potentially could have 32 puppies. What will happen if they cannot sell all the puppies, will they remain on the property. That will become a kennel then. He adds that the **Horsts** have one dog now that gets loose and barks. It an issue for them.

L.Overgaard answers that on the application **F.Horst** states that older females dogs will be adopted out.

R.Williams says that it is also not likely that all eight dogs will be pregnant at once or giving birth at the same time. He asks **F.Horst** what he plans to do with unsold dogs.

F.Horst answers that he plans to sell the dogs at a high price, if there are puppies left that have not sold he will lower the price and likely be able to sell the remainder. He does not think it will be an issue.

R.Rhoads asks about life cycle within the kennel, will he be pacing out the breeding.

F.Horst answers that yes, he will not have many liters at one time. He was recommended to breed just 2-3 dogs at once. The goal is to not have them all pregnant at once.

R. Williams asks how long they plan to keep the puppies before putting up for sale. **F. Horst** states eight weeks.

R. Rhoads asks applicant to review once more the acoustics for the kennel, he thinks the neighbors are concerned about the noise.

F. Horst adds that the kennel site is further down on the property, if they are able to hear a dog now it is because the dog is further up. **Mike Hiller** is the closest neighbor.

The only open side is on the East, he thinks that will make a difference with the noise. He hopes if there is any trouble with neighbors, the neighbors will come talk to him.

Jim Widboom asks about the pricing of the dogs.

R. Williams relays the question to the applicant.

F. Horst states that the dogs will be purebred, and will be sold at high price. Pricing varies, two years ago dog prices would have been doubled what it is now. The pricing will be in the upper hundreds.

D. Wright asks how many kennels are there in the county of Yates. **CEO B. Gerhardt** responds, eleven there has not been any issues on file in the town of Jerusalem that he is aware of.

Jan Widboom asks how they know if the dogs will be purebred, and get AKC paperwork.

R. Williams states that is not a zoning issue, that's a problem with his business.

Jan Widboom says it is an issue if he is unable to sell the dogs.

B. Gerhardt adds the USDA does inspections along with Ag. and Markets. They will follow up and verify what type of kennel it is.

R. Rhoads explains that the Zoning Board is to vote on the Zoning plan, not on the business plan for the kennel.

R. Williams answers, they vote on the appropriate waste, distance to property boundaries, how big his lot is, in this case he has a barrier of hedge rows on three sides. He is well down away from other properties. The noise is obviously a concern.

Jim Widboom confirms that the Zoning Board is concerned with noise.

R. Rhoads says it sounds as though the type of kennel he is building, the type of dog he is choosing to raise, and the position of the kennel should take care of the noise.

Jan Widboom says that she keeps hearing the board say 'they should.'

R. Williams responds that they cannot guarantee there will be no noise. If there is a problem, they can file a complaint. He cannot state that the dogs will not bark, dogs bark, they make noise. The distance from the property lines, and the vegetation he has around the place appears to him that it was adequate.

Jim Widboom asks if the Zoning Board has different criteria for different animals. For instance, if a person has cattle or dairy, they do not make noise. **E. Makatura** answers cows, pigs, and chickens all make noises.

R. Williams states that the dog kennels are permitted special use in the Town of Jerusalem. They have had stipulations on kennels in the past, such as a fence in between properties. They were worried if there was no natural barrier between neighbors. They have to look at each kennel individually.

They cannot make any promises, neither can Ferlin.

Unknown individual- what do we do if the dogs do make noise.

R. Williams if noise becomes a problem, neighbors will need to call CEO or the Yates Sheriff Department. If it is a problem, they can issue limitations.

B. Gerhardt states that noise ordinances under the Yates County Sheriff's office.

R. Rhoads adds they can always of course talk to their neighbors first.

Board member **J. Bird** states that there is a kennel law in place, it is 160-24 in the Municipal Code. All of the rules that will apply to this kennel are there. If any of those rules are violated CEO **B. Gerhardt** will likely get involved or bring in Ag and Markets or otherwise, he will. The town website lists all laws. The kennel law was written by residents who were concerned about dog kennels being in town. They were pretty particular about what they wrote. They covered the bases on just about everything.

Jim Widboom states that it sounds as though the board does not have a problem with this.

Neighbor **Steve Lieberman** asks if **F. Horst** has done breeding before.

R. Rhoads answers that his past experience is a factor that they would *not* consider if they grant or not. It is a business operation he is proposing, a use that is allowed in this area.

S. Lieberman researched the legality of the dog kennels. There are some New York state laws as well that they are dealing well. He imagines **Mr. Horst** would have to apply for permits with NY State and the board of health.

E. Makatura answers yes Ag and Markets. **B. Gerhardt** adds also the USDA. **S. Liberman** asks if that has been brought up and if he as applied for this.

R. Rhoads answers, again that is part of the business aspect, the board is here to see whether or not it meets setback requirements, has the right area, and is placed on the property such that it is a favorable location acoustically. Whether or not he has a waste plan, and a property that is large enough to handle that plan. Before he can commence any of this, he needs a permit.

R. Williams says if he doesn't have a permit he is in violation of the laws.

S. Liberman states that **F. Horst** had stated that there will be two dogs in each kennel, that is against NY state law. You can only have one dog in a kennel.

He asks if the kennel is granted, he asks if the kennel can be expanded without going to the Zoning Board. **R. Williams** answer no.

Board member **E. Makatura** answers that the applicant would have to come back to the Zoning Board.

S. Liberman states again that it is against the law to have two dogs in one kennel, from the state of New York. **R. Williams** clarifies that it should be stated as its own *pen*, not kennel.

R.Rhoads says that there will have to be numerous dogs in one kennel for breeding purposes as well as feeding puppies.

S. Liberman added that dogs are fragile animals. According to the state there must be a full-time employee available 24 hours a day. Not kids, but employees. Will there be someone there 24 hours a day that is qualified and able to take care of these animals.

R.Rhoads answers that is not a Zoning Board question to ask.

R.Williams says that they grant a permit for the Zoning and land, but he must still abide the laws. It does not give him permission to break the law or expand his kennel They have to go by what their job is as the Zoning Board. They are bringing up a lot of stuff which is a general concern with breeding kennels, but that is not a zoning issue.

S. Liberman he understands what the board is saying, but the permit is what people should or would do. He says people do not always do what they are permitted to.

R.Williams they can only grant a permit on what people ask. If they violate it there are other avenues that need to be pursued.

S. Liberman responds that he wants to get to the noise. The Environmental Protection Agency has law regarding noise. **B. Gerhardt** responds that there is a Chapter 107 of Municipal code covering a noise ordinance.

S. Liberman states he wants to note that it is there. The problem is he does not want to spend his own time or anyone else's time to call the police about noise complaints. He also does not want to stop someone from going into business. He came to the area for peace and quiet and does not want to hear a dog barking for 30 minutes then having to call someone.

E. Makatura suggest that **S.Liberman** should follow up with Ag & Markets as well as USDA to find out and express your concerns.

R.Rhoads says that is good for neighbors to voice their concerns here at the meeting so **F.Horst** can be aware, and he can expect him to operate within all the laws. He expects that he will be mindful of neighbors.

S. Liberman says that this area is known for puppy mills and he does not want another one.

Jan Widboom asks if the board takes into consideration if the business will be successful. **E.Makatura** answers, no that is not of their concern and there is no way to tell if a business will be or not.

Jim Widboom says **Ferlin** is his neighbor and he wishes him well. He wants to be able to talk to **Ferlin** if there is a noise issue.

R.Williams motions to close public comment, **R.Rhoads** seconds.

R.Williams makes a motion to approve application keeping in mind that he has to abide by all laws and regulations by state and town as well as federal government. **R.Rhoads** seconds.

The board was polled as follows:

D.Wright- grant
L.Overgaard-grant
E.Makatura- grant
R.Williams-grant
R.Rhoads-grant

Area Variance request from Mark and Mary White **App #11-2023**. 7485 East Bluff Drive. Applicant **Mark White** is present.

Mark White states there is a parking lot across the road from the lake. The primary purpose of the variance is to build a shed to accommodate bikes, convenience of not having to bring them to the top all of the time. The house is down below, he spoke with civil engineer and the engineer suggested up above to be less intrusive, not on the lake side.

He has since spoken with an excavating company and it suggested to raise still the existing wall there now.

R.Rhoads asks if that is what the high beams are there for now.

M.White answers he works in substation construction. He believes it will be a request for a permanent dock in the future. They may cut pieces of that up just to shore up the wall. The thought is to put drainage tiles, pee gravel and tubes. Bring that up the wall. They will build either a 10 x 12 shed or a smaller 8 x12 if needed. Similar to the one at Culver and East Bluff. It would face to the North; the ramp would go around the wall on the back side. There would be nothing in the parking area.

R.Rhoads asks if there is trees there, **M. White** answered no they will keep the path. Will do very little to touch the existing.

L.Overgaard asks if it will need to be dug into the slope.

M.White the wall right will be about 3.5 feet high, right now it is 3 feet. They will fill in stone right behind there. So, they can brace that wall there the crushed stone will help support that. The shed will sit about 3.5 feet high. It will have banister as you build an apron at that the door that faces North. It will wrap around the outside area of the parking.

E.Makatura asks if it will start at the wall, there was no pins for the board to locate where shed will sit.

M.White answers they will use the wall as one support, nothing inside the parking area.

E. Makatura wanted to confirm it was not sitting back any further. **M. White** confirms it will sit right in the middle.

D.Wright asks if the retaining wall will need to be altered. **M.White** said it will be made strengthened and that is it, on the backside. Put stakes down in the ground to secure it, and put braces back so it will not move forward with the weight of stone.

L. Overgaard confirms that the slope is not directly behind it, is there room behind there for a shed.

E. Makatura confirms there is room back there. **R. Williams** adds there is room, in fact it is a little lower.

M.White answers that it is at ground level immediate behind the wall. The goal is to not disturb the hill. Once they remove the sediments, they will put something to prevent erosion.

R.Rhoads adds that they do not want another incident similar to the garage slipping down during storm on West Lake Rd. They certainly do not want that happen to again. There needs to be structural integrity.

M.White he agrees, and says that the high beams and timber are being used to support.

D.Wright asks about the depth of the structure from the retaining wall West, asks how deep it will be.

M.White answers 10 – 10.5 feet, as to not disturb the land, excavate the hill. Filling it with stone to better support the hill.

R. Williams asks if the board has any further questions. With no further questions **R.Rhoads** makes a motion to approve the setback variance of 29.7 ft from center of the road for the shed. **E.Makatura** seconds. It is a 35-foot setback where 64.75 feet is required. 29.75 foot variance.

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.

E.Makatura-No.

D.Wright– No.

R. Rhoads-No.

L.Overgaard-No.

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

L.Overgaard- No, there is nowhere else for the shed. He is trying to not disturb the hill.

D.Wright- No.

E.Makatura-No, agreeing there is nowhere else for the shed.

R.Williams- Yes, you could build further up the hill, not that that is a good answer. But there is a feasible way to do it.

R. Rhoads- Yes, further up the hill but that is a less desirable location.

3. Is the requested Area Variance substantial?

R. Rhoads- Yes, 27 feet, almost 50% is quite substantial. The reason for setbacks is for safety reasons.

L.Overgaard-Yes, it is substantial.

D.Wright- Yes.

E.Makatura- Yes, same reasons as Randy.

R. Williams- Yes, but if it was on lakeside of the road would have been acceptable.

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

D.Wright-No.

R. Williams- No.

L.Overgaard- No.

R. Rhoads- No, the construction that is planned has structural integrity.

E.Makatura-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?**

R.Rhoads-Yes, he doesn't need to build a shed.

D. Wright- Yes.

R.Williams-Yes.

L.Overgaard-Yes.

E.Makatura-Yes.

The board was polled as follows:

D.Wright- grant

L.Overgaard-grant

E.Makatura- grant

R.Williams-grant

R.Rhoads-grant

Administrative Review/subdivision. **App #12-2023**. 2807 West Lake Rd. Owner Greg Patrick. Brother David Patrick is in attendance to present application to board.

E. Makatura recuses himself as he is his neighbor.

D. Patrick explains that his parents have lived at this property for 60 years. There is a 1200 sq. foot garage that is part of the 1-acre total lot.

The garage is now currently and has been used as a garage for previous owner, there was heating in there but at the same time it needs some the foundation work.

Not much maintenance has been done over the years. They would like to fix it and wants to turn it into a small two-bedroom residence. It is a large garage, not useful as a garage right now. There is already a garage attached to the house so it is not needed.

They are requesting to subdivide the property so they can put a house on it. The existing structure is there, 1200 sq. ft. The plan would be not to change the footprint, not making it any larger. Just improve it. Turn it into something that is more usable.

The issue that Bill and applicant saw when looking at this is that when subdividing the parcel, it would not meet the minimum area requirement of 20,000 sq feet for a subdivided parcel. It is closer to 9,600 square feet based on where they drew the sensible property lines. They could get 20,000 sq feet and

leave the parent lot there with its own lot. It would make erratic property lines, that do not make a lot of sense.

They drew out where they want it to be.

R.Rhoads confirms that it is necessary to subdivide the lot.

CEO Bill Gerhardt answers that yes, it is necessary. You cannot have two principal dwellings on one lot. It would need to be on its own lot.

L.Overgaard asks what is the criteria for a Principal dwelling.

B. Gerhardt answers that there are four categories. Sanitation, Cooking & eating, living area, sleeping area. All four of those classify it as a dwelling.

D. Patrick states that it looks like it may have had sanitation before, there is a drainage hole in the floor, it is insulated. It did have everything, but prior owner used it as an office/garage. It needs improvements. It is somewhat of an eye sore on the inside. Yes, it is a substantial variance, over 50%. If you compare it to other lots, for example his residence five houses down is on a 5,500 square feet. There are likely hundreds of these size lots across the lots.

R.Rhoads- agrees there are a lot nonconforming lots.

B. Gerhardt adds in that many of those lots are *preexisting*. **R. Rhoads** agree saying the board is very hesitant to add anymore.

B.Gerhardt clarifies from the Building Department's point of view it is his understanding that the town *cannot* create nonconforming lots.

L.Overgaard- once you separate the parcel, it could be sold separately and has no lake frontage.

D. Patrick answers if she is asking if it will have value with no lake frontage. If he is to sell it what will the market pay for. Yes, it is a little awkward because it is in between the road and the lake and does not have access. There is still a lot of people that do not have lake access.

R.Rhoads- It is also complicated because the access driveway serves seven properties, now would be serving eight properties. Th road would be covering a big chunk of that 9,600 sq. ft.

D.Patrick it would be like an urban lot within their little community. They could carve it out of the full lot, although they do not want to.

R.Williams asked what will they do with the building, rent or sell?

Applicant states yes rent or sell. Right now, it is not worth anything, it needs foundation repairs, water comes into garage currently. Intent to not change the footprint.

R. Williams added that they are asking the board to create a substantial nonconforming lot. He is not sure the board can do that.

B. Gerhardt adds that from their perspective they cannot.

Board member **J. Bird** asks **B.Gerhardt** that if they add another house to the driveway does it become a private road?

B. Gerhardt answers yes in theory, there is an existing structure there now. He would have to look into it. **J. Bird** says that private roads have a whole new set of criteria. With a private road you have to have easements, 24.75 feet from the center of the road from each side. Which does not count in your square footage for you the lot. You lose all that square footage on the lot.

R.Rhoads – adds that the 1,200 square foot will become big part of the buildable portion of the lot.

D. Patrick- is that assuming that this residence uses that driveway as their driveway.

Ceo- A new dwelling on the preexisting private road would make it include having to bring the road up to private road standards. That includes quite a bit of things.

L.Overgaard says they will still need parking space. **D.Patrick** asks if there is a requirement for that. **B. Gerhardt** says there is an off-street parking schedule.

R.Williams suggest that they table the application until **B. Gerhardt** can look further into it.

D.Wright asks if there is an agreement between the neighbors in regards to the driveway.

D.Patrick said he did not think so, former owner in attendance answered 'no.'

B.Gerhardt told the board the main question is can the town create nonconforming lots.

R. Rhoads states the request is to subdivide a lot and create a 9,670 square foot lot where 20,000 sq. feet is required.

R. Williams states the there is two issues for **B.Gerhardt** to look into. Can they create the lot, and would this have to become a private road.

B.Gerhardt says that he will reach out to the town lawyer. He understood that they could not, but will get clarification.

R. Williams makes a motion to table the application until July meeting. **R. Rhoads** seconds the motion.

OTHER BUSINESS:

None

Next meeting is Thursday July 13, 2023.

There being no further business, a motion was made by **R. Williams** and seconded by **R.Rhoads** to adjourn. The motion was carried unanimously and the meeting was adjourned at 8:09 pm.

Laura Swarthout/Zoning Secretary

