

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS
JULY 13, 2023

The regular monthly of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday July 13, 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
Alternate	Don Wright	Excused
Alternate	David English	Present (Voting)

Others present included: Daryl Jones-Town Board liaison. Bill Gerhardt- Code Enforcement. Jim Bird-Town Board councilman. Tom Kiefer, James Nardozi, Wendy Meagher. Louis -----and wife? Genovese.

A motion was made by **E.Makatura** seconded by **L.Overgaard** to approve the June Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS:

None

AREA VARIANCE/SPECIAL USE PERMITS:

Area Variance(s) request.

Application **#13-2023**. 352 Crescent Beach. Homeowners, Louis ----and wife Genovese present. Representative Wendy Meagher presenting on behalf of Meagher engineering.

Requesting two side setbacks of 4.8 ft, a rear setback of 24.9 ft and 4.2 lower first floor elevation for home.

W. Meagher presents to the board. The existing structure is on a compact lot. The current house is close to the property line, currently they are nonconforming on three sides. The data is based up a 1988 survey. To be above the flood plain for the finished floor would have to be 722, it is currently at 717.9. The homeowners are looking to rebuild.

The proposed house will be more conforming because they are trying to straighten it out a little bit more. They are proposing, 5.2 ft on both sides for setbacks.

The house is a bit larger lengthwise, but not violating a front setback or the lakeside. The other problem is the septic tank is on the west side of property. It was built between 50-60 years ago.

D. English confirms the septic is on the lakeside parcel. **L. Genovese** answers, yes.

W. Meagher adds that the tank will be on their side within the property limits, and be updated. Colby Peterson from Yates County Soil & Water approved new septic system.

The finished floor elevation for the existing house 717.9 they are raising it about a half a foot. 18.33, less than half a foot. If you look at adjacent parcels, they are at 717.6 and 719.5 so that is one of the reasons they are asking for the variance. There is no way to access it if they are to comply with the flood plain elevation. All neighboring houses are lower. The applicant does understand the risk of flood insurance, and it would be required.

D. English- asks what first floor level is going to be.

W. Meagher answers, 716 and 717 are grade. They will be up 100 feet from grade. D. English says that makes it 719.5 or something. 718.33 ft is what they are proposing, bringing it up from existing, but still, it does not meet the elevation of the flood plain.

W. Meagher states it will have to go up almost 4 ft. **R. Rhoads** adds that likely none of the houses down there meet that. **W. Meagher** agrees, they do not. They are looking to improve setbacks, they are meeting existing setback roadside, improving the West, and not matching on East side. But it is close, and keeping it 5.2 feet on either side. The current square footage is 793. The propose square footage is 878. That is with porch. Max tot coverage is 20% they are at 11.3%.

D. English asks where the leech field is.

Homeowner **L. Genovese** answers, North side of the street.

R. Rhoads adds that if it wasn't for the porch on the East side they would almost meet the setback, he inquires what the porch consists of.

W. Meagher answers a 4 x 5 stoop, with a little awning over entrance, not enclosed.

Chair **R. Williams** says his main concern is the elevation. Will the home get flooded being that low.

W. Meagher responds that there is always a risk. The whole area is like that, but bringing it up 4 feet also allows for more stairs to accessibility. Accessibly will be a problem.

D. English asks is the existing house being torn down is 717.9 and proposal is 718.33. **W. Meagher** answers yes.

R. Williams adds that he has had flooding at his dock at 719 feet. If the Zoning Board grants the variance, they will not be held accountable for any flooding. **E. Makatura** adds, if there is flooding 10 years from now, the town cannot be to blame. Homeowner **L. Genovese** answers that he understands.

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

L. Overgaard stated, she does not like it but it does not differ from the other homeowners on the street.

E. Makatura agrees, that all the lots are tight.

W. Meagher states that it will be a better, and more conforming lot. The cottage has aged and needs to be replaced. They are ready to make the investment.

E. Makatura- confirms that the septic was approved with Yates County Water and Soil. **W. Meagher** answers yes, there is a special leech line and special sands that allow a compact system. They are taking as much precaution as they can. It is nice and compact.

L. Genovese adds that in 2014 there was over a foot of water coming across the road and the leech field had been just fine. His system did not back up.

D. English made a motion to include three setback proposals in one motion, two side and one rear. **R. Williams** seconds.

The Area Variance Questions are asked regarding (3) setbacks:

Question #1

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

- R. Williams-no.
- E. Makatura-no.
- D. English-no.
- R. Rhoads-no.
- L. Overgaard-no.

Question #2

Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than the Area Variance?

- L. Overgaard-no, they do not have another option.
- E. Makatura-no.
- D. English-yes, they could do it within setbacks.
- R. Williams-no, it would not provide benefits.
- R. Rhoads-no.

Question #3

Is the requested Area Variance substantial?

- R. Rhoads-yes, they could move the house closer to the lake by a few feet.
- L. Overgaard- yes.
- D. English-yes.
- E. Makatura-yes.
- R. Williams-yes, it is substantial but it does improve the situation as it exists today.

Question #4

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

- E.Makatura-no, it is similar to other lots in that area.
- R.Williams-no, it is somewhat improving what is there.
- L.Overgaard-no.
- R.Rhoads-no, it will improve the septic.
- D.English-no.

Question #5

Is 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, they could keep it the current home.
- D.English-no, the conditions are difficult for the lot.
- R.Williams-yes, the answer is almost yes for this question.
- L.Overgaard, yes, they do not have to do it.
- E.Makatura-yes.

There being no further discussion, a motion was made by **D.English**, and seconded by **R.Williams** based on review of the area variance test questions, to grant the area variances as requested.

The motion was carried with a poll of the board as follows:

- L.Overgaard- Grant
- E.Makatura – Grant
- R.Williams- Grant
- D.English- Grant
- R.Rhoads-Grant

The Area Variance Questions are asked regarding the height variance:

Question #1

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

- R. Williams-no.
- E. Makatura-no.
- D. English-no.
- R.Rhoads-no.
- L.Overgaard-no.

Question #2

Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than the Area Variance?

L.Overgaard-no, building up to higher level is difficult.

D.English-Raising it is not feasible.

R.Rhoads-yes, there is more steps.

E.Makatura-yes, agrees with Randy.

R.Williams-no, it would not provide benefits.

Question #3

Is the requested Area Variance substantial?

R.Rhoads-yes.

L.Overgaard-yes.

D.English-yes.

E.Makatura-yes.

R.Williams-yes.

Question #4

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

E.Makatura-no, it will look in proportion to the rest of the neighborhood.

R.Williams-no.

L.Overgaard-no.

R.Rhoads-no.

D.English- no.

Question #5

Is 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, they could raise it.

D.English-no, they are stuck with land that is there.

R.Williams-no.

L.Overgaard-yes, it could be put on stilts.

E.Makatura-yes.

There being no further discussion, a motion was made by **R.Williams**, and seconded by **E.Makatura** based on review of the area variance test questions, to grant the height variance as requested with the town to not be liable for any damage due to flooding.

The motion was carried with a poll of the board as follows:

L.Overgaard- Grant

E.Makatura – Grant

R.Williams- Grant

D.English- Grant

R.Rhoads-Grant

AREA VARIANCE/SPECIAL USE PERMITS:

Area Variance (s) request.

Application #14-2023. 7721 W. Bluff Dr. Sutherland Family Trust. **James Nardozzi** presenting on behalf of Nardozzi construction. 32-foot height request, where 20 feet is allowed. A 12-foot height variance.

James Nardozzi presents to board. The client is requesting an overage in height, Chapter 160-30 B. **J.Nardozzi** state he has been working with the family for over 10 years. They routinely entertain their large family. It will be utilized by the family, not a VRBO.

The house had three additions in the past, they had discovered there is little to zero frost protection for the 2001 addition. The homeowners do things by the book.

They willfully upgraded their septic system, because there was a bad smell on the road when they were not required to. Colby Peterson from Yates County Soil and Water had told the homeowners it was not necessary.

There was a lot of consideration when it came to this specific project. The garage, and house were both in discussion since 2021. They looked at a variety of different aspects before they realized the least impact on the environment or dealing with another steep slope, and changing drainage on both property lines was the theory to build up.

The current garage is a 3-car garage and completely concrete, with 2-foot concrete walls. There is a one-on-one slope with essentially is behind the structure. There will be little to no earthwork to be done.

The first design set had been sent to Code Enforcer **B. Gerhardt**, they had gone back and forth with the measurements, the overall height of the structure. **B.Gerhardt** had said it looked like they would be 4-6 feet over. Giving them a document to complete. The licensed engineer sent the report. It was close.

Nardozzi Construction had measured where the staircase was going to go. By putting that landing you raise the elevation 2.5-3 ft. That is where they had got close to it.

The measurements depend on where you are measuring from. **B.Gerhardt** told engineering team and Nardozzi staff that the application has to go to the Zoning Board of Appeals considering they were right on the fringe. **J.Nardozzi** explained to the client, they had no kick back in going to the board.

J. Nardozzi added there will be no environmental impact, no additional impervious disturbances or increase stormwater runoff. No increase in the footprint size. No reduction in line of sight or restricted views or neighboring properties. The client owns everything to the road.

The neighbors have concealed properties that are not obstructing anyone's views. There is a leech filed and essentially dense woods on both sides. He reviews the site plan with the board members.

The ground elevation and top of the bonus structure from the attic space which is essentially 32 feet. The document that Bill presented takes the mean average of the center slope. Both Nardozzi Construction and **B. Gerhardt** have measured. Nardozzi took the highest measurement being 32 feet. From the ground level.

Nardozzi explains when they say 32 foot that is at the absolute lowest level.

B. Gerhardt explains from grade to the highest point which the building height is technically defined as, it is 32 feet, from grade. Where you drive into the garage.

R. Williams states the code says midpoint, and they have 3 different measurements for midpoint. Nardozzi responds that are 2' 8" inches over.

The variance they are asking for is 2' 8" asks **R. Williams**.

B. Gerhardt responds yes.

E. Makatura adds that the application states 12 ft. over is what they are asking for.

B. Gerhardt answers that they were doing that based of the 20 ft. versus 32 ft. That will be reflected in the documentation.

J. Nardozzi responds that essentially the client instructed him to show the floor elevation, and the mean elevation of the property because most of the property is on slopes. That is the way he wanted to present it. Depending on who measures it, like he stated. There will be an access for a set of steps for fire access and in and out. That will raise 2"6' – 2"8.' If they measure from that future point that will not need a variance. **J. Nardozzi** spoke with client and **B. Gerhardt** and they were right on the red tape.

B. Gerhardt says he measured from the average grade plain, which it is currently at. He got an allowable height of 29 feet.

R. Rhoads- confirms the applicant is asking for a 3 foot variance. **J. Nardozzi** answers 2 foot from where it is right now.

L. Overgaard asks how it does not compare with the roof of the house. **J. Nardozzi** states that the roof of the house will still be high, it is a tall house as it is right now.

B. Gerhardt answers around 35 feet range on the peak of the home.

J. Nardozzi adds that the home has had leakage in the roof and will need to be repaired/altered.

D. English asked about the rear of the garage, is there a retaining wall.

J. Nardozzi answered yes, there is 16 inch, thick soldier tiles.

J. Nardozzi explains that his clients desire more space for storage space for kayaks, wakeboards jet skis etc.

R. Williams asks which floor the new room will be.

J.Nardozzi shows the plans to the board, showing the proposed space in the attic. The second story, a recreation room. He says there will be no plumbing, however there will be electric. There is already a water tap there for jet skis etc. coming out of water, an external faucet.

R.Rhoads made a motion to approve a 3 foot variance to the overall height of the garage based on the average measurement style. The garage height will end up at 23 feet or less from the mean.

J. Nardozzi states he wants it to be known if they take a measurement from the ground elevation that it will be right at 32 feet.

B. Gerhardt clarifies that he wrote the variance as if it was coming from grade up; in following suit with the average measurement style, it should have been from the average measurement point of what is being requested.

R. Williams suggest they add to the motion that it is 32 feet from the front grade. **J. Nardozzi** agrees.

R. Rhoads states to amend motion, it would be 32 feet from the concrete floor. **R. Williams** says it is a 3-foot variance, but only 32 feet in height. **J. Nardozzi** adds that is how they submitted the building permit for transparency.

In addition to that, there is an expectation for no living space. **D. English** seconds.

The Area Variance Questions are asked regarding height variance.

Question #1

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

R. Williams-no.

E. Makatura-no.

D. English-no.

R.Rhoads-no.

L.Overgaard-no.

Question #2

Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than the Area Variance?

L.Overgaard-no, due to the land and situation with the house.

E.Makatura-no.

D.English-no, there is not a feasible alternative.

R.Williams-no.

R.Rhoads-no.

Question #3

Is the requested Area Variance substantial?

R.Rhoads-no.

L.Overgaard- no.

D.English-no.

E.Makatura-no.

R.Williams-no.

Question #4

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

E.Makatura-no.

R.Williams-no.

L.Overgaard-no.

R.Rhoads-no.

D.English-no.

Question #5

Is 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, they could reduce the peak.

D.English-no, they have an unusual set of circumstances.

R.Williams-yes, they want more storage.

L.Overgaard, yes.

E.Makatura-yes, garage is fine as is.

The motion was carried with a poll of the board as follows:

L.Overgaard- Grant

E.Makatura – Grant

R.Williams- Grant

D.English- Grant

R.Rhoads-Grant

ADMINISTRATIVE REVIEW/SUBDIVISION:

Application #12-2023. 2807 West Lake Rd. David Patrick. Applicants not present.

CEO **B.Gerhardt** was instructed by the Zoning Board of Appeals to reach out to the town lawyer last month regarding App#12-2023.

B.Gerhardt reports that the lawyer confirmed it is a nonconforming lot. **R.Rhoads** added that essentially every area variance they grant creates a nonconforming lot.

D.English states that in the event the Zoning Board is involved with the creating of an undersized lot there would have to be substantial hardship. He opposes the board entertains the application. Although he does believe in property rights, but there are other ways this could be accomplished. He adds that he believes the decision should involve the assessor, deeds, and contracts. it should not be the Zoning Board that makes the decision.

B.Gerhardt confirms that variances from the subdivision code come to the Zoning Board of Appeals. Chapter 142-29, division of property. He suggests the board does not act on it tonight.

R. Williams says the applicant will need to apply for a variance that will go to the Zoning Board regardless. **B.Gerhardt** explains his understanding was that the town cannot create nonconforming lots, therefore Bill had to deny the subdivisions application. The ZBA has the authority to grant or deny area variances, as of now the proposed lot is nonconforming.

D. English proposes that given the guidance from the town attorney the ZBA does recognize it has the power to grant or deny, however the members of the board agree they frown up such variances. They would need to prove substantial hardship. **R. Rhoads** seconds the motion.

E. Makatura states there are currently too many nonconforming lots. **L. Overgaard** adds the applicant can still apply. **R.Rhoads** agrees, the board has the authority but not inclined to vote so.

B. Gerhardt restates this his interpretation is that the town cannot create nonconforming lots, that was his initial thought therefore he denied the subdivision application. The applicant challenged the interpretation which is an administrative review that then goes to the Zoning Board.

At last month's meeting the Zoning Board requested a legal opinion from the town lawyer. **R. Williams** interpreted it as the Zoning Board cannot, but if ZB board make it conforming by granting a variance they could.

The Zoning Board cannot do it without a request for a variance, **B. Gerhardt** added. **R. Williams** states that if Bill's interpretation is correct, they cannot create a nonconforming lot, in addition to that it could become a conforming lot if he applies for a variance and they grant it. As of now it is proposed to be nonconforming.

D. English states that they board has been advised by town attorney that they do have the power to grant a variance of this kind from the law that sets forth the minimum size of a residential lot. Given the understanding of that opinion that this board recognizes that it is has the power to grant a variance of this kind. Some members of the board have gone onto to say that they frown upon such variances and it would have to be a substantial hardship to be shown to grant a variance. **D. English** moves this proposal.

R. Rhoads seconded.

D. English proposes they communicate to the applicant as a final handling of his appeal from the Code Enforcer. **E. Makatura** agrees and states there is too many nonconforming lots out there now.

L. Overgaard restates that the applicant can still apply, they are not voting no to it. Just relaying it may not get very far. **R. Rhoads** states yes, they have the authority but based on tonight's discussion is not incline to grant that, but it is not a decision.

R. Williams asking for all in favor that **B. Gerhardt** relays a statement to applicant say aye. All board members, aye.

R. Rhoads makes a motion to adjourn the meeting. **E. Makatura** seconds. Meeting adjourned 8:31 pm.

Laura Swarthout
Zoning and Planning Clerk