

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS
SPECIAL MEETING
AUGUST 31, 2023

The special meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday August 31, 2023 at 7 pm by Vice Chair Rhandy Rhoads.

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

Roll call	Rodgers Williams	Excused
	Randy Rhoads	Present
	Earl Makatura	Present
	Lynn Overgaard	Present
	Steve Schmidt	Present
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. James Nardozzi. Wendy Meagher. Louis Genovese. Mary Perry. Marty Ladd. Other identified individuals.

A motion was made by by **L.Overgaard** to approve the July and August Special meeting Zoning Board minutes as written. **S. Schmidt** seconded. The motion was carried unanimously.

COMMUNICATIONS:

Letter opposing Crescent Beach application #13-2023
Letter supporting Crescent Beach application #13-2023
Letter opposing W. Bluff application #14-2023

AREA VARIANCE/SPECIAL USE PERMITS:

Vice Chair R. Rhoads explains previous applications must be reheard due to clerical error whereas residents did not received mailings of notification. The board is rehearing applications in order for residents to be able to voice their concerns. He apologies to applicants.

Area Variance (s) request.

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

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

W. Meagher presents to the board. They are looking to do a tear down, rebuild of their existing cottage. The existing footprint is about the same, the proposed is a bit longer. The current house has a setback of

1 foot, and the other side is 9.7 feet. They are proposing 5.2 feet on each side to center up the house better on the lot. They are proposing to have the rear setback less than a half a foot closer to the road because of the way it is positioned. The existing house is rotated a little bit more. The other variance they are requesting is finished floor height, because they are down in the flood plain area. It cannot meet the standard. It would look silly 4-5 feet up in the air if they try to meet that. She states that again the side setbacks are being requested, but they are bettering one of the sides. The rear is about the same.

The other improvement is relocating the current septic system. It is encroaching on neighboring property. They are looking to move it across the road. They are also putting in a brand new raised septic leech field. They are improving the environmental aspects of the existing home as well. **W. Meagher** welcomes the board to ask any questions.

R.Rhoads confirms the home is a two story structure. Homeowner **L. Genovese** answers, yes. **R.Rhoads** asks if there is any further questions or comments. He states the board has received two letters from residents, one letter is showing support from neighbor Marilyn who is not present. Another neighbor voicing concern, **Martin Ladd**, who is in attendance.

M. Ladd said he read the previous meetings minutes; he thought the septic system was staying on the same side. Now he sees a big issue.

He states that neighbor Matt Davidson who lives on the other side just put a raised septic system in. There will be now one on the other side of him. What will that do to his septic system. He did not know anything about it.

M. Ladd is present with his sister, **Mary Perry** who lives at 358 Crescent Beach. He reads the letter he sent to the Zoning Board members. (Letter and pictures on file)

After reading letter he reiterates that his biggest concern is the leech field. **W. Meagher** confirms his residence as 358 Crescent Beach.

She states that her house is even closer to the property line than what they are proposing. Board member **E. Makatura** states the neighbor wants to address the septic system.

W. Meagher explains that the new home has the same number of bedrooms, and footprint as existing home. He answers that they do not have a problem with the size of the house, but with the 4.8 ft variance because that will be close to his property.

W. Meagher answers that the septic is designed for the same footprint. And technically it is still functioning. They could leave the current septic system. It is not for Zoning Board to decide, that is for the Planning Board and health department. However, they are investing into this new home and they want to improve septic system by putting more fill material underneath. If it fails theirs is lower in the ground it will leech outside ways, but they are putting new fill in so it will function properly. They are also improving the location of the septic tank. The new location will be better.

CEO B. Gerhardt states that the new system will be under the road. **L. Genovese** adds that it is being designed so the flow towards Townsend Rd. Towards the west. He knows the problems that Joe Miran had with Matt Davidsons. He had to redo his line. He told Tony (Meagher employee) that they have to have a flow to go West. He does not want that same problem.

R. Rhoads inquires if it is that Health Department that approves the septic system. **B.Gerhardt** answers that it is Yates County Soil and Water. The applicant has already received approval.

M. Ladd asks what is he to do if he does begin to have septic problems. What recourse does he have.

R.Rhoads states that from the Zoning Board perspective there is not a variance associated with the septic system. That is part of the planning board and Yates County Soil and Water. They will not be considering that tonight.

B. Gerhardt states the project does not require any Planning Board review, he can provide the contact information for Yates County Soil and Water.

R. Rhoads asks if there are any other further questions.

M. Ladd adds that he would like to refer to the pictures he sent Zoning Board members. With the house being two stories, **B. Gerhardt** interrupts to remind the board that there is not a height variance being requested. **M. Ladd** states the he has no problem with Lou building the home.

However, in the future they had planned to add a solar roof. With a two-story building that may not be an option for him anymore. **R. Rhoads** adds that he would certainly shade him from the West. **M. Ladd** says that he stays within the setbacks that were previously before is it the proper setbacks.

E. Makatura asks if they are expanding on the East side from what it is now. **W. Meagher** answers yes, from eastside it is 9.74 ft from property line, they are proposing 5.2 ft. If there is a concern about the view this is the front setback line which is not even close to front set back line. (Showing on site plan) He does not meet front or side setbacks.

R. Rhoads that all of the lot lines are so tiny. **W. Meagher** adds that if you take existing side setbacks from side to side currently it is 9.7 and 1 foot on the west side so you have 10.7 feet of space total. They are proposing 5.2 feet and 6.3 feet so they are making it narrower than the existing. It would be 8.3 to the house where 10 is required. They are in good shape on the east side.

Bordering neighbor inquiries about the easement that is currently being used for the septic. (Greg)

R.Rhoads asks if they have currently given an easement to the neighbor. He answers yes for a distribution box. **E. Makatura** confirms that the new one will not cross their property. Unidentified woman confirms that it will be in between both houses, **W. Meagher** answers yes.

R. Rhoads asks if there any other comments or questions. With no further questions, R. Rhoads reiterates what the applicant is requesting.

The variances include a 4.8 setback where 10 is required on the East side of the property, 4.8 ft setback where 10 is required on the West side of the property, a 24.9 ft rear setback where 30 foot is required, as well as the lower first floor elevation of the home will be 718.33 feet where 722.46 feet is required due to the flood plain in that area. They would like to build about 4.2 feet below the flood plain.

D. English confirms the height variance, **R. Rhoads** confirms they would like to be 718.33 feet where 722.46 feet is required. **D. English** asks CEO **B. Gerhardt** where that is set forth. **B. Gerhardt** answers that it is in the applicable to all districts section of the code. He believes it states 722 ft for first floor elevation.

D. English makes a motion to grant the 3 setback variance applications, those being 4.8-foot side setback on east side, another 4.8-foot setback on the west side, 24.9 rear setback on the right of way of Crescent Beach. **E. Makatura** seconds. **R. Rhoads** confirms it would be a 5.2-foot variance on either side and the rear setback would be 5.1 variance.

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?

D. English- no based on the existing structure being similar in setbacks.

E. Makatura-no, same reasoning.

R.Rhoads-no.

S.Schmidt-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, lots are so small there is not much they can do.

S.Schmidt- it will be more narrow.

E. Makatura – no.

D.English-yes, they could do it within setbacks.

R.Rhoads-no, it is currently a nonconforming house, this is improving it.

Question #3

Is the requested Area Variance substantial?

R.Rhoads-yes, but improving on setbacks.

L.Overgaard- yes, it is variances on all sides.

S.Schmidt-yes.

E.Makatura-yes, two sides lines are at least 50%. Rear setback is not as bad.

D. English- same reasons that are already expressed.

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.

D. English -no, there is no change to the physical or environmental conditions.

L.Overgaard-no.

R.Rhoads-no.

S. Schmidt- no they are making it look better and increasing the property value.

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, it is self-created. Not necessary.

S.Schmidt- yes, they knew what size lot was upon purchasing.

D.English-no, it is a nonconforming lot.

L.Overgaard, yes.

E.Makatura-yes.

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

L.Overgaard- Grant

E.Makatura – Grant

S.Schmidt- Grant

D.English- Grant

R.Rhoads-Grant

The Area Variance Questions are asked regarding the elevation of the house, building it 4.2 feet below the floor plain. **E. Makatura** makes a motion to accept what has been requested 718.33 feet. **S. Schmidt** seconds the motion.

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. Rhoads- no the owners are being respectful keeping it low.

D.English – no, however the entire neighborhood is below the flood base. The way to comply with that would be to put property on stilts. That would be more determinantal to the area.

E. Makatura-no, fits in with the rest of the houses.

S.Schmidt-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-yes, they could put it on stilts but that would fit in neighborhood.
- D.English-Raising it is not feasible.
- R.Rhoads-yes, they could build taller.
- E.Makatura-yes, could raise foundation.
- S. Schimidt- yes.

Question #3

Is the requested Area Variance substantial?

- R.Rhoads-yes.
- L.Overgaard-yes, it is substantial.
- S. Schimidt- yes.
- D.English-yes, it is lower flood level, but not much.
- E.Makatura-no, it's below the flood level not much.

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.
- L.Overgaard-no.
- R.Rhoads-no, building a shorter structure is beneficial to the neighborhood.
- S. Schimidt- 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-no, they bought it before zoning code was in place.
- D.English-no.
- S.Schmidt-no, with the restrictions that the town is not liable for flooding issues.
- L.Overgaard-no, that is how the entire neighborhood is.
- E.Makatura-no, same reasons.

D. English makes motion to accept the 718.33-foot first floor elevation where 722 feet is required including that the town has no responsibility or liability with any flood or water damage regarding this property. Recognizing that the applicant is proceeding at his own risk. **L.Overgaard** seconds.

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

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

R. Rhoads reiterates that the town of Jerusalem and or Yates County is not responsible for any flood damages that you have. Homeowner **L. Gennovese** agrees stating he would not have assumed so.

AREA VARIANCE/SPECIAL USE PERMITS:

Area Variance (s) request.

Application **#14-2023**. 7721 W. Bluff Dr. representing Steve and Linda Sutherland of the Sutherland Family Trust.

James Nardozzi presenting on behalf of Nardozzi construction, as the general contractor. He has done a variety of projects for the homeowner over the past decade. They are requesting a height variance for an addition on top of the garage. The garage is currently a single story, with a bonus structure that is faux in nature. The garage was constructed in 2014-2015. They were mindful of neighbors carving out a hillside.

Over the past 7 years the family has debated selling their primary home in Las Vegas. The lake home has been a central meeting ground for the family. It will be used for extended family and not as an air b and b. With that it requires a lot of storage for the family.

The garage being set on a hillside is essentially a one-on-one slope. They would like to have a second story on what is currently there, this would be them at a need for a height variance.

Nardozzi Construction and **CEO B. Gerhardt** went back and forth on measurements, they determined there was a grey area so the CEO and homeowner wanted to be on point and bring it in front of the board.

J. Nardozzi points out measurements on the site plan to Zoning Board.

He confirms with **B. Gerhardt** that it is 29 feet, and they are requesting 32 feet. 32 feet from grade, **E. Makatura** confirms. It is less than a 4-foot variance.

J. Nardozzi wants to add that homeowner owns everything behind them so if you standing at the peak of the slope essentially the building is only 10 feet. It is surrounded by trees. Directly to the North is their home. To the South is a vacant lot. In terms of views there is no obstructions.

R. Rhoads relays that the board received a letter of oppose from neighbor Emilio Timilione, who resides at 7424 W. Bluff Dr.

There are no less than fifty mature trees between properties. In terms of obstruction of the lake view there is nothing.

It is a difficult area for construction referring to the Verizon easements. They had to move two utility poles hitting rock in the same place where the potential expansion would be if they kept the height without the variance.

The drainage concourse has been working for eight years. The neighbor directly to the North does have a concern about that. Everyone has been happy with the water. Drainage that has been installed has worked flawlessly, they do not want to disturb that.

They think the path with least resistance to give the client the storage place they need above the garage is essentially to go up, that would include a 4-foot height variance.

J. Nardozzi reads letter of oppose from neighbor **E. Timilione** stating that the 32-foot variance would block his view. Board member **E. Makatura** states that the neighbor may be reading it wrong, they are looking at the 32 feet from where it is supposed to be which is way too high.

J. Nardozzi agrees that if they are reading it incorrectly that would be like a tower and way too high. The variance can read confusingly.

Town board liaison **J. Bird** suggests to eliminate the 32-foot verbiage out of applications, it has nothing to do with the variance that is being requested. CEO **B. Gerhardt** confirms it is a 3-foot variance.

J. Nardozzi explains that both the client's and Nardozzi's corporate attorneys want to make sure that all they are asking for is what they have disclosed on the plans. That the structure is allowable from the ground elevation to the top.

E. Makatura adds that some towns do request from the bottom. Jerusalem is different that they do it that way.

D. English confirms that the space is to be used just for storage. **J. Nardozzi** answers yes and that is a recreational space for the grandkids to do their homework or color. They have 5 grandkids, be able to have an isolated space to hang.

R. Rhoads asks about plumbing. He responds no indoor plumbing, there is currently a spicket outside for outdoor use only. **J. Nardozzi** adds that there is a large renovation going for the home.

CEO **B. Gerhardt** explains that are asking for 23 feet from the average grade plain measurement. **E. Makatura** adds they are doing 4 feet more. **J. Nardozzi** states they are saying 4 foot as an approximate measurement.

R. Rhoads asks if there are any questions from the board.

With no further questions **R. Rhoads** makes a motion to accept the variance of 3 feet on the garage where 20 feet is required, with a maximum height of 24 feet of the average grade. **D. English** adds to amend the motion making with a condition that this shall be used for storage and not to occupy as sleeping or overnight domestic use of this property as stated by the code. **J. Bird** adds that in the Code is states that there is no sleeping in accessory structures, so that will be covered. Only allowed in primary structure. **D. English** withdraws amendment. **S. Schmidt** 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?

- D. English- no- based on the presentation and visit to the property.
- E. Makatura-no.
- S.Schmidt-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.
- S.Schmidt-no.
- R.Rhoads-no, they can figure out drainage.

Question #3

Is the requested Area Variance substantial?

- R.Rhoads-no, it's a small change.
- L.Overgaard- no.
- D.English-no.
- E.Makatura-no, in agreeance that is a small change.
- S.Schimdt-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, it fits in.
- S.Schmidt-no.
- L.Overgaard-no.
- R.Rhoads-no, long way the line.
- 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, not necessary.
- D.English-no.
- S. Schmidt- yes, if they want to add on.
- L.Overgaard, yes.
- E.Makatura-yes same reasoning.

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

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

R. Rhoads – September 14th next meeting, three variance applications.

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

Laura Swarthout
Zoning and Planning Clerk