

**TOWN OF JERUSALEM
ZONING BOARD OF APPEALS**

September 14, 2023

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday September 14, 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	Excused
	Earl Makatura	Present
	Lynn Overgaard	Present
	Steve Schmidt	Present
Alternates	David English	Present (voting)
Alternates	Donald Wright	Present (voting)

Others present included: Jim Bird- Town Board liaison. Renee Williams, Brian Miller, Wendy Meagher, Daniel Neal, Heller An Shapiro, Mike Williams, Dave & Michelle Naylor, Richard & Judy Morgan, Keith & Annette Toaspern.

A motion was made by **S.Schmidt** to make a spelling correction regarding August 31st Zoning Board minutes as written. **E. Makatura** seconds. The motion was carried unanimously.

COMMUNICATIONS: Letter of support from Richard Morgan, 5929 E. Bluff Dr. regarding application #18-2023 sent via email to board members 9-6-2023.

AREA VARIANCE/SPECIAL USE PERMITS:

Area Variance request from Brian Miller **App #17-2023**. 2859 Merritt Hill Rd. Applicant is present. **Brian Miller** relays he is requesting a variance for a 24 x 24 garage. There is no level land for a leech field except for front yard. The only place to the put structure is where it is shown on site plan.

It is in-between water and electrical lines the house and the driveway. The garage is under the house, ceiling in garage is only 92 inches. Garage doors are 6.5 ft wide. An SUV fits in there, however their truck sits outside the garage. The variance is to place the garage as shown on drawing. It is also across from stone turn around.

Board member **L. Overgaard** inquires if they will enter from the turn around. B. Miller answers yes.

E. Makatura adds that it looks good. **L. Overgaard** states it is slanted way back. **B. Miller** adds that NYSEG has an acre for utility pole and they will relocate it and it has been staked out.

D. English asks about the proposed height of the building.

B. Miller answers he is unsure of height but probably standard. It is 6 x 10 pitch with the same shingles as they house to match. **D. English** asks if it is more than 15 feet. **E. Makatura** answers that the parcel is in Ag-Res and it can be 35ft. It is not in R1. An accessory structure.

R. Williams makes a motion to approve 17-foot variance being 38 feet from the center line of the road.

E. Makatura states it is 44.75 ft from the center of the road. **R. Williams** states applicant will be at 38 feet, that is 7.5 feet.

D. Wright inquires how applicant came up with 7 ft.

B. Miller responded from CEO **B. Gerhardt**, he got 55ft. **D. English** said it would be 38 feet. The 6.75 ft includes the overhang. **E. Makatura** states the variance is 7 ft, **E. Makatura** 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.
- S. Schmidt – No.
- L. Overgaard- No.
- E. Makatura- No.

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

- R.Williams- No, it's the only way feasible.
- E. Makatura- No, because the way the land is.
- L. Overgaard- No, ground slants back so far.
- S. Schmidt- No, he agrees with Lynn.

3. Is the requested Area Variance substantial?

- L. Overgaard- No.
- R.Williams- No.
- E. Makatura- No, it is only a 7 ft variance.
- S. Schmidt- No.

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, it will fit in nicely.
- L. Overgaard- No.
- 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, they do not have to do it.
- R. Williams- Yes, he wants to build a garage.
- L.Overgaard- Yes.
- E.Makatura- Yes.

The board was polled as follows:

- L.Overgard- Grant
- E.Makatura- Grant
- R. Williams- Grant
- S. Schmidt- Grant

AREA VARIANCE/SPECIAL USE PERMITS:

Area Variance request from **Daniel Neal** and **Heller An Shapiro. App #18-2023.** 5903 E. Bluff Drive
Applicant is present.

Wendy Meagher presents on behalf of applicant to Zoning Board. The applicant is requesting two variances. One is to enclose an existing stairwell; they are looking to renovate their existing two car garage.

The lower level is constructed of masonry, they will keep it and remove first level, rebuilding it. Making improvements to enclose existing stairwell, the stair access from South side. Enclosing it and creating patio and deck on back side.

The setback from the road is the same, they would like to raise the roof line. They need space for hobbies, and past time activities. The current garage is a little unsafe. There is no room in front of the garage to park a car or vehicle to pull out. They will be using it as a hobby house. They already have a 3-car garage for vehicles.

The existing floor structure is concrete and deteriorating. They are only replacing first story.

E. Makatura points out bathroom on site plan. **W. Meagher** answers yes, explains the upper floor will be used to an office, and the lower level to be used for a pottery studio.

R. Williams states the bathroom can make it a potential living space. **W. Meagher** answers that the use is only for a pottery studio.

D. English inquiries about approval of water and sewer. **W. Meagher** answers that there is not currently water and sewer being serviced. They would like to propose a sewer lateral that will tie into their existing pump station.

D. English asks who will be approving it.

W. Meagher answers that they are before board regarding just the variances. **E. Makatura** confirms, for setbacks and height. The CEO has reviewed it for those aspects, that they have been in close contact with. **D. English** asks if Bill has told them that it is proper to hook the garage up to the house water and existing grinder pump. **W. Meagher**, yes has. **D. English** states he does not believe that is true, and it is not permitted in R1 district. **W. Meagher** answers he is well aware of this and has directed them to come to the Zoning Board.

L. Overgaard adds that this space could easily become an apartment, taking out a desk and adding a bed which is not allowed. **D. English** states this building does not confirm to the zoning law, asking **W. Meagher** if **B. Gerhardt** told her why.

W. Meagher explains it is because of the setback. **D. English** states correct asking if there was a variance ever granted for them to have a garage too close to the street or was it there before Zoning law.

W. Meagher answers she believes it was there probably before Zoning law. **D. English** says this building is a nonconforming structure. **W. Meagher** answers, preexisting- nonconforming.

She adds that the family can explain the renovation, and the need for their hobby home.

D. Wright asks why they can't not add to the existing home.

D. Neal answers that for safety reason, there is a blind entryway. They plan to use it for personal space verse garage. They want the electric kiln set far from house, strictly for their use of hobbies. It is currently a useable space. The bottom is a dirty mess and the upper part is used as a garage. But tricky to get in and out of.

They want to use it for a hobby house, for personal use. Ventilation is important. Having an electric kiln in the house of next to it is not a safe way. This sets it away from house, at a place where adjacent neighbors are comfortable with.

It is strictly for their use and hobbies, art related to keep them vital. The bathroom is needed because pottery is a messy and dirty business. You want to get it off quickly.

D. English adds that is a fair hike from their residence. **D. Neal** says yes, it is a 1-acre lot, going up the hill. **H. Shapiro** adds that the chemicals need to be rinsed off right away. If it sits on your hands, it could be toxic.

L. Overgaard states she understands the need for that. But that with the addition of a microwave, refrigerator, and dishwasher as well. It sounds like a kitchen. **D. Neal** answers that is really just a coffee station, and a place to warm your coffee.

W. Meagher answers the space is not going to be used as a cooking facility. **D. Neal** confirms they do no have plan to use it a cooking facility nor do they want to.

Town board liaison **J. Bird** asks if the Zoning Board received the correction from CEO **B. Gerhardt** regarding application. The variance is an 11 ft variance. It is expanding a nonconforming structure.

Neighbor **Renee Williams** (5847 E. Bluff Drive) states she is concerned about a nonconforming location becoming an apartment. Her family had discussed renting out a piece of property, but we they will never put another location that could possibly become an apartment. They want to follow the rules, and they are concerned about the land in that space.

In addition, the setbacks are quite a bit compared to what they are supposed to be.

People walk close to the road, and not always thoughtful when pulling out. She is really concerned that this space will be so much more than what is presumed. She is not assuming any ill intent, worried about what happens to that space. There is another house that recently built, and there has been nothing but problems with that contractor.

W. Meagher points out that they are not worsening the setback. **R. Williams** replies they are enlarging the amount, adding 5 more ft to the South, making the nonconforming worse.

W. Meagher they are not expanding into a setback, they are within lot coverage. **R. Williams**, yes you are, because you are asking for more feet.

D. English adds that they are seeking a variance from the center line of the road. So, you are extending the building into an area that is not allowed. You are expanding a nonconforming building and you not keeping it within today's zoning law. Zoning laws says no expansion, unless it otherwise conforms with the law.

W. Meagher states there is access there now. Her guess is 4 feet, might be another 6-12 inches by adding another wall. There is access already, they are just enclosing that area.

R. Williams asks **J. Bird** about the Zoning Board approving a bathroom, kitchen, and water.

J. Bird answers that the board is not approving that, but they are to approve the height and nonconforming structure. That is all you are concerned with. However it is legitimate to assume with bathrooms it could be living quarters, which you cannot live in accessory structure. **E. Makatura** adds that is up to the Code Enforcer.

J. Bird states that conversations will need to be held with the CEO and the Water and Sewer department. He is not sure about the hook up of water and sewer to another building. You cannot live in an accessory structure.

R. Williams confirms that they can rule on the two variances, however applicants will need to speak with CEO, Water and Sewer and potentially the Planning Board for site plan. **J. Bird** adds that the Zoning Board may recommend it goes to the Planning board for site plan.

Applicant **D. Neal** assures the board there is no ill intent here.

E. Makatura states he understands but it does not mean five years from now someone else does not make it into an apartment.

D. Neal states it has been a useless structure, purpose is intended for recreation. There is no intent to flip or sell the house. They have been vacationing on the lake for 17 years. The garage is not a safe garage to use, they want to keep it simple for private use, no ill intentions. They do not want to rent the home, and never plan to.

The variance is 9.9 ft from right of way. 15 ft is the requirement. The other thing is to cover the staircase from one level to the next. It is a dangerous staircase. The ice and rain can make it unusable. It does not really serve any other function but to enclose a staircase for safety reasons.

E. Makatura asks if the foundation will be new or existing. **D. Neal** states they plan to use as much as they can. **Meagher** engineering has checked it carefully. There is no water on the hill side. They can waterproof it. Stick to that floor plan, but to cover stairway. The height variance is for light, and ventilation.

E. Makatura states that are already over on the height, 11 feet over on height. **D. Neal** adds he thought it was just 6 feet. **E. Makatura** answers that on that side of the road, it is 15 feet.

W. Meagher states they are asking for 26 feet, where 20 feet is allowed. **E. Makatura**, says no it is 15 feet is allowed on that side of the road, it is 20 on the other side. She answers that **CEO B. Gerhardt** had told me them 20 feet, she states she was misinformed. **E. Makatura** explains that on that side of the road is 15 ft all the way down, 20 on the other side.

W. Meagher states that if the board has concerns about the function of the building and some of the issues that may be more prone to Planning Board. Can they can table the application, then go to Planning Board and get clarification from Code Enforcer. They could come back to the Zoning Board requesting the variance.

E. Makatura agrees and states that would be better for the applicant.

Neighbor **Charles Morgan** says he is in favor of the project. His family has owned lake property for over 75 years. He has seen major improvements to the area over the years. He has no objections. He fully endorses the project. The hunted for years for the right place and they have found the right place.

His garage is almost identical to applicants. He has more of a variance in a sense, his stairway goes out 4 feet. He endorses the project, and gives hard copy of letter to the Board that was received via email. Copy on file.

W. Meagher adds they also received a letter on the other side from neighbor in favor of project. Not received by Zoning Board members.

R. Williams suggests to table application.

J. Bird states the board needs a reason to table it.

W. Meagher states that as applicant she is requesting to table it until they can get further verification from CEO and Water & Sewer.

Neighbor **Mike Williams** states is he concerned with the height variance. What is the point of more height? Ventilation can be managed in other ways then a height variance. The property across the street that is not developed yet, at some point it will be and the height restriction is not going to go away. Neighbors behind them are concerned about things being blocked. The house that just went in that is beyond the height restriction is already causing a major problem. Other neighbors have lost sight.

W. Meagher explains that the hardship is that they property is on a hill, a large slope. On one side there is very little room between building and property line. They are being penalized because it is not on a flat side. From the road they are about 15 feet. The greater request is due to the grade.

D. English asks applicant to confirm if she would like to table it or continue. **W. Meagher** answers to table the application.

R. Williams makes motion to table application. **E. Makatura** seconds.

AREA VARIANCE/SPECIAL USE PERMITS:

Area Variance request from **David Naylor. App #19-2023.** 2421 West Lake Rd. Applicant present. Owners David and Michelle present to board. **E. Makatura** recuses himself from voting, as he is the contractor for the project.

D. Naylor explains they have owned property since 2005, they are proposing a garage. It is existing structure that is a barn, sits tight to property line.

They are moving to the area full time, and need a spot for parking. Building a new garage replacing existing structure. It would sit back 7 feet verse a foot and a half. The reason they are asking for 7-foot setback instead of 10 is so they can get a little more length in their driveway so they can park cars in front of garage.

They are asking for a height variance, being 6 feet. The reason for the height variance is for a woodworking shop on the second floor.

The owners have spoken to all three neighbors. The neighbors to the North are present. He shows letters of support to board members, neighbors across the street and the one to the South. They have received plans are okay with what they plan to do. They have a drawing of what they plan to do. There are two variances in terms of structures.

D. English asks if the structure will really be a garage, it will be something else, correct at 48 feet?

D. Naylor says it will be a garage. It will have 3 car garage doors, one double and two singles on either wing of it. Using it for utility trailer, jet skis, two vehicles and storage. The second floor will be used for woodworking.

E. Makatura adds the downstairs is only 8 feet height, second floor using the roof pitch to make area for the workshop.

D. Wright confirms they are looking to do a 7-foot setback, could you take the difference from the depth of the garage. **D. Naylor** answers they could, but he would like that the ceiling takes away space, it is narrow without addition.

Neighbor **Annette Toaspern** asks if they can see the plans. Plans are shown to neighbors.

L.Overgaard asks how many trees are to be cleared, **D. Naylor** answers just three pine trees.

Discussion on site plan amongst **Toasperns**, zoning board and **D. Naylor**.

Neighbors and **D. Naylor** spoke prior to meeting agreeing up on no windows on the backside of structure. Neighbors concern is the windows, and no water in out and out. Conversation amongst Zoning Board, applicant and neighbors while reviewing site plan.

A. Toaspern states she is upset because they are on a nonconforming lot and it is not fair for everyone to not follow it. Their garage is exactly as what it should be, they had to stay within the confines.

D. Naylor states that the variance needs to be 7 feet so they can fit cars in garage.

A. Toaspern asks that is to be written in there is no water and no water out, it does not work anymore.

E. Makatura answers that she cannot say there is no water, they can wash their cars. **A. Toaspern** states she is going from when she was on the Planning Board with storage buildings. Adding that those of them on nonconforming lots and are conforming, it is not fair for all those who have followed the rules.

A. Toaspern states they do not have a problem with the variance, in fact they would suggest it going even closer. **D. Naylor** says they chose 17 feet with overhangs to see what would work best.

A. Toaspern states as long as there are no windows on the North Side, and it does not ever become living space.

Naylors confirm it is not a problem to not have windows on North side.

D. English inquiries about the lot coverage percentage. **E. Makatura** answers 19.5%, spoke with CEO **B. Gerhardt** about it and checked it several times. It is under the 20% lot coverage.

R. Williams makes a motion to grant the 3-foot variance to 7-foot setback where 10 feet is required. **S. Schmidt** seconds.

The board answered the 5 area variances questions regarding the 3 ft where 10 is required.

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, it’s a small variance well off from the road.

S. Schmidt – No.

L. Overgaard- No.

D. English- No, the neighbor to the North has structure close to the line.

D. Wright- No.

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

R. Williams- Yes, they could move it forward.

D. English- No, the lot is too narrow.

D. Wright- Yes, the depth of the garage could make a difference.

L. Overgaard- Yes, they could move it further away.

S. Schmidt- Yes.

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

- D. English- No.
- L. Overgaard- No.
- R. Williams- No.
- S. Schmidt- No.
- D. Wright- No.

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, it will fit in nicely.
- D. English-No.
- L. Overgaard- No.
- 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?**

- D. Wright-Yes.
- S. Schmidt-Yes.
- R. Williams- Yes, they want to do it.
- D. English-Yes.
- L. Overgaard- Yes.

The board was polled as follows:

- L. Overgaard- Grant
- D. English-Grant
- D. Wright-Grant
- R. Williams- Grant
- S. Schmidt- Grant

The board answered the 5 Area Variances questions regarding 6-foot variance where 15 is allowed.

L. Overgaards motion to grant 21-foot height variance be allowed where 15 feet is 15 feet is allowed. **S. Schmidt** seconds. **R. Williams** amends it to include no windows on North side of the garage, and no living space shall be in this structure.

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, as long as they abide by the no windows.
- S. Schmidt – No.
- L. Overgaard- Yes, it is just too high in that space.
- D. English- Yes, it does not need to be that high.
- D. Wright- No.

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

R.Williams- No.

D. English- Yes.

D. Wright- No.

L. Overgaard- Yes, they do not have to make it so high.

S. Schmidt- No.

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

D. English- Yes.

L. Overgaard- Yes.

R.Williams- Yes, 6 foot is substantial.

S. Schmidt- Yes.

D. Wright- Yes.

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.

D. English-Yes.

L. Overgaard- Yes, too high for that space.

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?**

D. Wright-Yes.

S. Schmidt-Yes.

R. Williams- Yes, they want to do it.

D. English-Yes.

L.Overgaard- Yes.

The board was polled as follows:

L.Overgard- Grant

D.English-Deny

D.Wright-Grant

R. Williams- Grant

S. Schmidt- Grant

Resident **A. Toastpern** informs those in attendance of a lecture regarding Crossing Keuka Lake Wednesday September 20th at 6:30 pm.

There is a vacancy for Zoning Board secretary Laura Swarhout. Potential meetings December, January, and February.

Tentative next meeting: October 12th, no applications received yet.

R. Williams makes motion to close the meeting at 8:16 pm. **S.Schmidt** seconds the motion.

Laura Swarthout/Zoning Secretary