

**TOWN OF JERUSALEM
ZONING BOARD OF APPEALS**

September 13, 2007

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, September 13, 2007 at 7 pm by Chairman Ron Rubin.

Roll Call:	R.Rubin	Present
	Glen Herbert	Present
	Jim Jameson	Present
	Jim Bird	Present
	Bob Fox	Present
Alternate	Jim Creveling	Present

Others present included: Loretta Hopkins/Town Bd., Bill Sutherland, Michael Griffiths, Jan & Gary Molyneaux, Jim& Nancy Koester, Ef Adnopo, Brian Blackman, Ray Cordello, Dale Lane, Ed & Rita Castillo, Cheryl Pitti, Tim McMichael and Ron Stanley.

A motion was made by J.Bird and seconded by B.Fox to approve the August Zoning Board minutes as written. Motion carried unanimously R.Rubin-approve, G.Herbert-approve, Jim Jameson-approve, Bob Fox-approve, Jim Bird-approve.

COMMUNICATIONS

Chairman R.Rubin stated that board members had received a letter from Dale Lane (copy on file) regarding property which had been given an area variance in May of 07. This will be discussed under other business.

OLD BUSINESS

Application #907 for William Sutherland owning property at the corner of Pear St. and Assembly Avenue requesting a Special Use Permit to build a five unit Townhouse for rental purposes.

This application was reviewed during the Public Hearing at the August Zoning Board meeting. There was a letter and a signed petition of neighbors from seven households which was received and read at the public hearing. There was one unsigned letter submitted. **The letter and petition were against the 5-unit townhouse being built.** Copies of all letters on file with the application.

Mr. Sutherland was present to answer any further questions for board members.

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The Yates County Planning Board did not have a quorum of members at their meeting but the members in attendance discussed the Special Use Permit referral and recommended approval as advisory only.

Jerusalem Planning Board reviewed this application and recommended approval for the special use and to forward it on to the Zoning Board.

ZAP Secretary stated that there was not anything in writing yet from the Planning Board, but verbally she had been told that the SEQR review had been completed with a negative declaration being determined.

The Final site plan is approved with mitigating conditions for a gravel parking lot, and whatever other conditions were listed by the Planning Board. The applicant, Mr. Sutherland stated that there would be eleven parking spots and the number of units only required seven parking spaces.

Ed Castillo, a neighbor on Assembly Ave. had concerns if the property were ever sold what would prevent several persons renting a unit and having several cars so as to saturate the parking conditions. Mr. Sutherland stated that a family use designation had been added to the permit as per terms outlined in the Town Zoning Code. Mr. Castillo

was pleased to have this clarification.

Chairman R.Rubin stated that the special use application is the subject that is being considered keeping in mind that if approved, it is subject to the conditions of the Final Site Plan as approved by the Planning Board.

Board Member, J.Bird, made a statement with regards to the Master Plan that this area is a mixed use area. Chairman R.Rubin stated that he had concerns regarding this application in light of the neighbor concerns and petition which was presented at the August meeting.

A motion was made by J.Bird to deny this application.

ZAP Secretary noted for the board that this area is in the R2 zone which allows for permitted uses for educational and residential purposes and that a townhouse with less than 50 units is allowed by special permitted use in this area. The applicant's townhouse would be connected to public water and sewer.

R.Rubin seconded the motion to deny this application referencing the negative input from the neighbors.

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The motion was carried with a poll of the board as follows: G.Herbert-deny, B.Fox-deny, J.Jameson-deny, R.Rubin-deny, J.Bird-deny.

Application #909 for Gary Molyneaux owning property at 462 East Bluff Dr. to request an Area Variance to build a 2 section boathouse with less front and rear yard setback than zoning allows and requesting an area variance for minimum lot depth.

This application was tabled from the August meeting to allow an adjacent neighbor to receive proper notification of this variance request.

The board members noted in the discussion from the August meeting that Mr. Molyneaux was willing to enclose the sides of the boathouse.

The area variance test questions were reviewed with the following results: #1(1-yes, 4-no), #2(0-yes, 5-no), #3(5-yes, 0-no), #4(1-yes, 4-no), #5(5-yes, 0-no).

There was more discussion about the actual setback variance that is being requested. It was noted that the diagram showing the rear yard setback is measured from the road center line to the proposed building leaving less than a 5 ft. rear yard setback.

A motion was made by J.Jameson and seconded by R.Rubin to deny this application as applied for. The motion was carried with a poll of the board as follows: G.Herbert-deny, B.Fox-deny, J.Bird-deny, R.Rubin-deny, J.Jameson-deny.

There was then discussion with the applicant about sliding the main boat house building towards the water to allow for a greater rear yard setback, and leaving the wing building in the proposed location. Mr. Molyneaux was agreeable with repositioning the main boathouse structure closer to the high water mark. He asked to amend his application bringing the main building no closer than 9 ft. to the highwater mark and 31 ft. from the road centerline with the wing portion of the building being the closest to the highwater mark at 6 ft. 9 15/16 in.

Board members were in agreement that this is a SEQR Type II action.

A motion was made by R.Rubin and seconded by B.Fox to grant the area variance request as amended. Sides are to be enclosed. It was also noted that the applicant will submit a new site plan drawing to the Secretary showing the amended setbacks which will be filed with the area variance application. Board members **also** noted that the area variance being granted covers **the area variance needed** for

minimum lot depth between the road and the lake being less than required by zoning.

The motion was carried with a poll of the board as follows: G.Herbert-grant, B.Fox-grant, J.Bird-grant, J.Jameson-grant, R.Rubin-grant.

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NEW BUSINESS

Application #910 for Camp Good Days and Special Times requesting a Use Variance to continue using the property at 69 West Lake Rd., Branchport (aka as 3618 & 3628) Rte 54A, Branchport, as purchased and used since 1988.

Mr. Ray Carduro, part of the Camp Administration, was present to answer questions for board members. Brian Blackman, who is responsible for the Camp properties, was also present.

Mr. Carduro gave a brief history of what the present property has been used for in the past 12+ years since the Camp purchased it. The former use of the property was a motel with swimming pool, office space and a single family dwelling which was occupied by the motel owner and is presently used by the Camp Caretaker.

After the Camp purchased the property, there was work done on a new swimming pool and the motel rooms were used as office space for Camp Staff. The existing bathhouse which has bathrooms and shower facilities was upgraded for the children that use the pool. There is a washer and dryer at this location for Camp Staff who are at the Camp for several days.

There was a brief review of the Camp Good Days history and the property on the east side of Rte 54A, which was purchased in 1985 and given a special use permit at that time. Several years passed with the Camp using the facilities on the east side

of the road and the purchase of property on the west side of the road 3 years later. The Camp Administration assumed that the property purchased in 1988 would automatically become part of the Camp facility. Both properties on the east and west side of the road are located in the R1 (lake-residential zone). In 1993 there was challenge to the special use permit granted to the camp for the property on the east side of Rte 54A which subsequently went to the Yates County Supreme Court. Judge Falvey ruled in favor of the Camp retaining the Special Use permit for the east side of the road as this is the only property that had applied for the special use status at that time.

When the Camp applied for a building permit in the Spring to redo the bathhouse facility making it winterized so as not to freeze the pipes, the Code Enforcement Officer denied the permit based on the fact that this part of the Camp facility had never applied to be brought under the Camp Use.

Camp Administration met with Code Enforcement making out the paperwork to apply for a Use Variance to bring this property on the west side of the road into compliance for zoning purposes.

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Because there are no special uses for camp facilities listed in the R1 zone, a use variance was applied for. Mr. Carduro stated that after they had purchased the motel property, there was a great deal of money invested in the pool area and bathhouse. A financial sheet attached to the application notes the amount of money that has been invested in the bathhouse renovation and upgrades. This is in addition to the money which was initially spent after the property was purchased in 1988 and the new pool installation and bathhouse upgrades that were done at that time.

Chairman R. Rubin was concerned with the fact that the Use Variance test requires that **one of the submissions from the applicant**, which the Zoning Board would see is the dollars and cents

proof that the applicant is deprived of all economic use or benefit from the property.

Mr. Carduro stated that the Camp is a not-for-profit organization and does not “fit the box” for this particular Use Variance test. His statement to the Board was that the benefit to the users of the Camp, which are the children, is in the use of the swimming pool because many of the children who come to camp are for various medical reasons unable to use the lake and the swimming pool at this location has been especially made to accommodate these children with a wheel chair ramp, etc. so that they may have an opportunity to go into the water.

It was also noted that the existing use has not significantly changed from the prior use since the Camp has owned the property. The motel rooms have been adapted to use by staff, the caretaker’s house, and the pool area and bathhouse are pretty much as they were prior to the Camp’s purchase except for the significant upgrades. Mr. Carduro therefore maintained that the character of the neighborhood has not been changed nor will it be changed by the granting of this variance. The hardship for the Camp comes from their thought process that the Judge’s order included all of the property that they owned on both sides of the road and they therefore had moved forward under this assumption.

Mr. Carduro stated that the children are not required to pay anything to go to Camp Good Days and Special Times. He noted that as part of the administrator of the Camp’s finances that it costs a lot for food, insurance, camp maintenance, busing children to the Camp facilities, etc.

An adjacent neighbor was present stating that she had some erosion problems next to her property which occurred as a result of the removal of some trees and shrubbery along the creek. Her property borders the creek and the camp facility on the north side but on the east side of the road. Brian Blackman stated that he had received a letter regarding this matter just that day and had not had a chance to discuss it with Camp Administration.

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Mrs. Pitti stated that she was not against the use on the west side of the road, but had come to the public hearing since she wasn't sure what else was involved with the application before the board. Mr. Carduro stated that the Camp would do everything to be a good neighbor and resolve the problem with Mrs. Pitti.

The Yates County Planning Board reviewed this application and has recommended approval for this action.

The Jerusalem Planning Board reviewed this application and recommended that this application be approved. The Planning Board reviewed the short form SEQR for this property and has determined a negative declaration based on this review.

Board Members reviewed the Use Variance test questions with the following results: #1(3-yes, 2-no), #2(5-yes, 0-no), #3(3-yes, 2-no), #4 (4-yes, 1-no).

Mr. Carduro stated that at least \$400,000 ± has been invested in this property in the past without even considering the estimated \$70,000 ± of additional monies that are needed to winterize the bathhouse areas.

Upon review of the test questions and further discussion by board members of the circumstances surrounding this particular application, a motion was made by G.Herbert and seconded by J.Bird to grant this use variance application noting the unusual circumstances of the Camp having owned this property for 13 + years and being a not-for-profit organization. Chairman R.Rubin stated that he would like some supporting documentation (case law) from Attorney Phil Bailey regarding the Zoning Board's decision granting this application **without receiving documentation showing that the applicant is deprived of all economic use.**

The motion was carried with a poll of the board as follows: J.Jameson-grant, B.Fox-grant, J.Bird-grant, R.Rubin-grant, G.Herbert-grant.

Application #911 for Tim McMichael owning property north of Skyline Trading Post and across the road from 3108 and 3110 Skyline Dr. to request a Special Use Permit for a multiple dwelling development to have four duplex units on one parcel of property consisting of 4 acres.

Mr. McMichael was present to answer questions for board members.

The Yates County Planning Board reviewed this application and recommended approval for this action.

The Jerusalem Planning Board reviewed this application and recommended concept approval for the 4 duplex units as a multiple dwelling development. The final site plan will be reviewed at the October Planning Board meeting.

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There was a brief discussion about the driveway location for this property and how it will serve the duplex units. There was a question as to whether all four duplex units would be built at once. Mr. McMichael stated that depending on the time of year, he was proposing to build two duplex units and then the other two, and hopefully these would be built within a short time frame of each other.

The SEQR form Part II was not reviewed by the Planning Board. Based on the lack of SEQR review and determination, the zoning board asked the applicant if he would be comfortable with having this application tabled and return to the Zoning Board for their October meeting. Mr. McMichael stated that he was okay with coming back in October.

A motion was made by G.Herbert and seconded by J.Bird to table this application until the October Zoning Board Meeting. The motion was

carried with a poll of the board as follows: J.Jameson-table, J.Bird-table, B.Fox-table, R.Rubin-table, G.Herbert-table.

Application #912 for Jim Koester owning property at 1000 East Bluff Dr. to request an Area Variance to build a garage on the west side of East Bluff Dr. with less front and rear yard setback than zoning allows and to build the garage 5 ft. higher than zoning allows for an accessory structure.

Mr. Koester was present to discuss his application stating that because of the existing mature trees and vegetation on this side of the road, he is asking for the 2 variances for front and rear yard setback in order to keep at a minimum the number of trees that will need to come out in order to build the garage. He also noted that the garage opening would be facing the north instead of towards the road and that is another reason for the variance requests. The trees and vegetation will actually minimize the visibility of this building from the road.

Mr. Koester mentioned that he had talked with his neighbors and everyone was happy to have him be able to keep as many trees as possible.

There was some discussion about the rear yard lot line and because of the shape of the lot it was difficult to make this determination of side and rear property lines.

The footprint of the garage is 26' x 44' with a 20' x 6' extension on front right (west) side of the structure.

This garage would be built for 3 cars and 1 boat. Pictures of the site and proposed garage location had been given to board members with copies on file with the application.

Board members were concerned with the size of the proposed building. There was a question as to whether it could be downsized.

The size of the proposed garage with a requested 20 ft. height seems very large. J. Koester stated that was why he wanted to leave as many trees as possible. J.Bird stated that it would still be visible when the leaves come off the trees.

The area variance test questions were reviewed with the following results: #1(5-yes, 0-no), #2(3-yes, 2-no), #3(5-yes, 0-no), #4(1-yes, 4-no), #5(5-yes, 0-no).

It was noted again that the front yard variance request is for 15 ft. and the rear yard variance would be 18 ft. if the location of the garage is slightly repositioned. The height request is still for 20 ft. The area that is presently without trees was the former location for the septic leach field. The dwelling is now on public sewer and the leach area is no longer needed or used.

J.Koester stated that he felt that the requested variances which were asked were better than the alternatives which would be more environmentally destructive if he were to try and meet all the zoning requirements.

A motion was made by J.Jameson and seconded by J.Bird to deny this application as applied for due to the requested variances being substantial.

The motion was carried with a poll of the board as follows: B.Fox-deny, J.Jameson-deny, R.Rubin-deny, G.Herbert-deny, J.Bird-deny.

OTHER BUSINESS

A letter and drawing submitted to board members from Contractor Dale Lane (dated 9/6/07) copy on file, with reference to the decision granted for Area Variance #900 for Efrim Adnopo, asks for the zoning board to revisit this decision based on site plan conditions that have come about as a result of the road setback and conditions of the excavation into the side hill.

Mr. Lane was present with engineer Ron Stanley and property owner Efrim Adnopoz to discuss what had happened at the site across the road from 820 East Bluff Dr.

Board member J.Bird (neighbor and friend of the applicant) excused himself for this review and alternate member J.Creveling came forward to sit with the board.

A motion was made by G.Herbert and seconded by J.Creveling to agree to revisit the decision for Area Variance #900. The motion was carried with a poll of the board as follows: B.Fox-revisit, J.Jameson-revisit, J.Creveling-revisit, R.Rubin-revisit, G.Herbert-revisit.

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It was noted that at the May 2007 meeting a variance was given for a front yard setback of 5 ft. from the edge of the road right-of-way to the proposed garage roof overhang and an 18 ft. setback to the rear yard property line.

After the engineer had laid out the proposed site plan with the proposed garage, it was submitted for a building permit which was issued and the site preparation of digging into the bank was commenced. There was a lot of rock encountered.

Due to the cost of this removal and being back almost to the neighbor's lot line and old road bed the excavation was halted to determine location of the proposed building.

Contractor D.Lane stated that part of the problem was the night when the area variance was granted the building was shifted to the north to stay away from the gulley area. The actual road at this location goes in towards the bank and a picture was given to the board members (to be filed with the variance #900) showing the edge of the road as the orange painted line seen in the picture.

D.Lane told board members that he had Rick Ayers from YC Soil and Water out to the site to review this problem. An email of Rick Ayers recommendations were sent to contractor with copies given to board members, CEO and a copy for the file.

Mr. Simpson had been notified of the problem and while not real happy about it, was concerned as to how the integrity of the old road on his property would be kept. By asking for a change to the rear yard setback, the edge of the bank is actually farther away from the old road belonging to Mr. Simpson, about 15 ft. which is a shorter distance than was originally given. The gabion baskets will be anchored into solid ground with a cable and dead man type anchor. The old road actually tilts away from the edge of the bank area.

After reviewing the issues involved with the site, a motion was made by G.Herbert and seconded by R.Rubin to amend the previous decision for the rear yard setback to 8 ft. rather than the 18 ft. due to the rock formation of the bank, to keep the integrity of the old road area intact by following the recommendations of Rick Ayers from Yates County Soil and Water.

The motion was carried with a poll of the board as follows: B.Fox-amend, R.Rubin-amend, J.Creveling-amend, J.Jameson-amend, G.Herbert-amend.

There being no further business a motion was made by J.Bird and seconded by B.Fox to adjourn the meeting. The motion was carried unanimously (5-yes, 0-no) and the meeting was adjourned at 9:20 pm.

Respectfully

submitted,

Elaine

Nesbit/Secretary