

Approved

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

January 9, 2014

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, January 9<sup>th</sup>, 2014 at 7 pm by Vice-Chairman, Jim Crevelling.

Roll Call:	Glenn Herbert	Excused
	Jim Crevelling	Present
	Ed Seus	Present
	Dwight Simpson	Present
	Earl Makatura	Present
Alternate	Rodgers Williams	Present
Alternate	Joe Chiaverini	Present

Others present included: Richard & Carolyn Clouser, Charles Carter, Nancy & Dave Middleton, John McKinnon, Pete Townsend, and John Phillips/CEO.

A motion was made by E. Seus seconded by E. Makatura to approve the November Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS:

Vice-Chairman James Crevelling read a letter from the NYS Sheriff's Association written on behalf of the Association in support of Application #1025 for the Cleveland's proposed project and request for Area Variance at 9675 East Bluff Dr. PY.

AREA VARIANCE/SPECIAL USE REVIEW

Application #1025 for David Cleveland owning property at 9675 East Bluff Dr. Penn Yan requesting an Area Variance to rebuild a mudroom on the back of an existing cottage with less set-back from the rear yard property line than zoning requires.

Mr. Charlie Carter, contractor for Mr. Cleveland was present to answer questions for board members and to discuss Mr. Cleveland's proposal.

The cottage itself is approximately 15.9 ft. from the edge of the rear yard property line as measured to the cottage wall. It was noted by the contractor that there used to be an existing mudroom, at one time, attached to the cottage, but the date at which time it was removed is not known for sure.

It appears from the existing old footprint of the cement foundation in front of the rear doorway, that the old mudroom was approximately 37 ft. as measured from the center of the traveled way. Adding the new expanded part to the mudroom will bring it the edge of the road right-of-way or 25 ft. as measured to the center of the traveled way and thus the request for now rear yard set-back.

Some board members were concerned about the fact that this was a pre-existing, non-conforming cottage and the requested area variance would be increasing the degree of non-conformity.

There was a brief discussion with the Code Enforcement Officer about the fact that on the new homes being built today that there was a requirement to have something similar to a mudroom so that when the outside door is opened it does not open directly into the living space.

Neighbors that were present, spoke out on behalf of this proposed request stating that this cottage actually sits down lower than below the road bed and this mudroom addition will not have an adverse effect on surrounding properties. They noted that the property has always been kept up very well and there are several bushes on both sides of the walk-way extending towards the road that will help this addition to blend in.

The area variance test questions were read with the following results:

1)Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property owners will be created by the granting of the area variance: (0-yes, 5-no).

2)Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (0-yes, 5-no).

3)Whether the area variance is substantial: (3-yes, 2-no). J.Crevelling-yes, E.Seus-no, D.Simpson-no, E.Makatura-yes, R.Williams-yes). J.Crevelling was of an opinion that this area variance request was substantial because of its proximity to the rear yard lot line and the fact that the mudroom is attached to the cottage which is a dwelling. D.Simpson stated that he did not think the area variance was substantial because of other area variances which have been given in close proximity to the edge of the road right-of-way, such as garages.

4.Whether the proposed variance will have an adverse effect of impact on the physical or environmental conditions of the neighborhood or district: (0-yes, 5-no).

5.Whether the alleged difficulty is self-created: (5-yes, 0-no).

The board was in unanimous agreement that this was a SEQR Type II action.

A motion was made by J.Crevelling seconded by D.Simpson to grant the Area Variance as requested for a 10 ft. variance for the mudroom addition that it should come no closer than 33 ft. to the center of the traveled way as measured to the roof overhang of the mudroom at the closest point.

The motion was carried with a poll of the board as follows: E.Makatura-grant, E.Seus-grant, R.Williams-grant, D.Simpson-grant, J.Crevelling-grant.

In granting this area variance the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this locality.

Application #1026 for Dave and Nancy Middleton owning property at 4790 East Bluff Dr. Penn Yan requesting an Area Variance to remove the existing deck replace it with a larger deck and add a set of stairs at both the north and south end of the proposed new deck.

Mr. & Mrs. Middleton were present to answer questions for board members as was their contractor, Mr. John McKinnon of McKinnon Construction.

Mr. McKinnon, the contractor stated that the Middleton's existing deck is in a state of disrepair and needs to be replaced. In replacing the existing deck they would like to keep the same distance off the lake but extend the deck size to the north and to the south and add steps at both the north and south end of the deck as access. Currently there is a stone planter at the bottom of the walkway just before the current deck at the north end and this would be removed so that it is all deck area.

Board members had questions and concerns about the existing retaining wall and how stable it is. It appears to be leaning towards the east. The contractor noted that this has been taken into consideration and that Mr. & Mrs. Middleton are also aware of this as well. It was noted that this retaining wall may well be something that needs to be addressed by not only the Middleton's and their contractor, but by the Town Highway Superintendent as well. It could require a Steep Slopes Permit. It was noted that this area of East Bluff Dr. is very vulnerable to erosion by the lake and any type of construction that takes place so close to the road bank and the Town has gone to great lengths in some of these areas to help protect not only the road but the integrity of the bank along the shoreline. Gabion baskets have been used as a good source of protection and may be a replacement option for the retaining wall at this location should it need to be replaced. It was suggested that Mr. & Mrs. Middleton and their Contractor should contact the Town Highway Superintendent to discuss this matter.

Vice-Chairman J.Crevelling stated that in reviewing this application he noted that the pre-existing deck extends out over the high water mark according to the survey map provided. The request for the deck extensions would also be out over the high-water mark. The Zoning Board does not have jurisdiction to grant any variances past the high-water mark.

He had looked online noting that the lake level at this time is at 712 ft. and a few inches. Therefore when the lake level is at mean high-water it would bring the water up to the legs on the east side of the deck.

There was a brief discussion about access and the fact that steps to the lake are allowed with a small landing to be no greater than 16 sq. ft.

In reviewing the request of the applicant, to extend the deck to the west, it was noted that the deck would be extending into the road right-of-way and the Zoning Board has no authorization to grant any area variances in the Town Highway Right-of-way.

The area variance test questions were reviewed with the following results:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property owners will be created by the granting of the area variance: (2-yes, 3-no) J.Crevelling-yes, E.Makatura-yes, E.Seus-no, D.Simpson-no, R.Williams-no.

2. Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (5-yes, 0-no). J.Crevelling – rebuild the existing deck.

3. Whether the area variance is substantial: (4-yes, 1-no). J.Crevelling-yes, E.Makatura-yes, E.Seus-no, D.Simpson-yes, R.Williams-yes. E.Seus, given where it is located on that very steep bank and the surrounding properties the requested area variance is not substantial. D.Simpson, the requested variance is substantial due to its proximity to the high-water mark.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (4-yes, 1-no) J.Crevelling-yes, E.Makatura-yes, E.Seus-no, D.Simpson-yes, R.Williams-yes. The yes answer to this question is given because of the deck being extended over the high-water mark with a request to expand it on the north and south ends over the high-water mark.

5. Whether the alleged difficulty was self-created: (5-yes, 0-no).

Board members were in unanimous agreement that this would be a SEQR Type II action.

A motion was made by D.Simpson seconded by J.Crevelling to deny the Area Variance application as applied for. The motion was carried with a poll of the board as follows: R.Williams-deny, E.Seus-deny, E.Makatura-deny, J.Crevelling-deny, D.Simpson-deny.

A motion was then made by D. Simpson and seconded by E. Seus to grant an Area Variance to allow a 16 sq. ft. landing area to be attached at the north end of the applicant's deck.

The applicant may replace the pre-existing deck as is on the same footprint allowing the 16 sq. ft. landing to be attached at the north end of the deck. The new landing to comply with the zoning regulations, i.e. no closer than 10 ft. to side yard lot lines, out of the road right-of-way, and can come only to the high-water mark.

The motion was carried with a poll of the board as follows: R. Williams-grant, J. Crevelling-grant, E. Makatura-grant, E. Seus-grant, D. Simpson-grant.

In granting this variance the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this locality.

Application #1027 for Mary Foster owning property at 3431 Brandy Bay, Penn Yan to request an Area Variance to build a one story detached garage with greater lot coverage than zoning allows.

Mr. Peter Townsend, the contractor for Mr. & Mrs. Foster was present to answer questions for board members.

It was also noted, that while this application was going to be heard by the board at this meeting, no action will be taken until the February meeting, due to the fact that this application needed to go before Yates County Planning Board for their review. Their meeting takes place on January 23<sup>rd</sup>, 2014.

Mr. Townsend explained that the concrete pad (385 sq. ft.) would be removed and the one existing 8 ft. by 10 ft. shed would also be removed. The replacement garage (288 sq. ft.) with roof overhangs would have lot coverage of approximately 25% which is 5% over what zoning allows.

Vice-chairman J.Crevelling had a letter (dated 1/9/2014) from Bonnie Barney addressed: To Whom It May Concern, stating that the vacant space in the center of our loop drive is owned in common by ten members of the Brandy Bay area and should be considered as part of footprint size of structures in proportion to lot size in this area for each of the ten members. This vacant area is to be kept open according to the membership bylaws, however, its value in percentage to lot apportionment does have significance. (Copy of letter on file with application).

Board members noted that the side yard setbacks will be met and the height of the garage will be no greater than 15 ft. per zoning regulations.

The area variance test questions were read with the following results:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby owners will be created by the granting of the area variance: (0=yes, 5=no).
2. Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (0=yes, 5=no).
3. Whether the area variance is substantial: (5=yes, 0=no).
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (0=yes, 5=no).
5. Whether the alleged difficulty was self-created: (5=yes, 0=no).

There being no further discussion, a motion was made by J. Crevelling and seconded by R. Williams to adjourn the public hearing for application #1027 and table a decision until the February 13<sup>th</sup>, 2014 Zoning Board meeting.

The motion was carried with a poll of the board as follows: E. Seus-approve, E. Makatura-approve, D. Simpson-approve, R. Williams-approve, J. Crevelling-approve.

**OTHER BUSINESS:**

Vice-Chairman J. Crevelling asked if there was any other business. There was no other business, and a motion was made by J. Crevelling, seconded by E. Makatura to adjourn the meeting. The motion was carried unanimously (5=yes, 0=no). The meeting was adjourned at 8:35 pm.

Respectfully submitted,

Elaine Nesbit/Secretary

