

Approved

Town of Jerusalem
Zoning Board of Appeals

June 22nd, 2018

The Zoning Board of Appeals special meeting was held on Friday, June 22nd, 2018 at noon at the Jerusalem Town Offices.

The following Zoning Board members were present: Earl Makatura, Rodgers Williams, Ed Seus, Kerry Hanley, Joe Chiaverini-excused. Also present was Daryl Jones/Town Bd., Pat Killen/Town Supervisor, and Attorney Dan Spitzer

The purpose of the meeting was for the zoning board members to review their finding of facts with regards to Area Variance Application 1121 for Jeffrey and Donna Spencer for property at 10193 East Bluff Dr. and the two requested Area Variances.

Based on their review of the statement of findings, a motion was made by Ed Seus and seconded by Rodgers Williams to adopt the statement of findings as amended. (See attached copy).

The motion was carried with a poll of the board as follows: Earl Makatura-accept, Ed Seus-accept, Kerry Hanley-accept, Rodgers Williams-accept.

There being no further business, the meeting was closed at twelve forty-five.

Respectfully submitted,

Elaine Nesbit/Secretary

**TOWN OF JERUSALEM
ZONING BOARD OF APPEALS**

Application #1121 for Jeffrey and Donna Spencer for property at 10193 East Bluff Dr., Penn Yan requesting Area Variances to build a new single family home on a lot located on the east side of East Bluff Dr. in the Lake-Residential Zone. The first area variance is for a set-back from the rear yard property line as measured from the center of the road to the closest part of the home which is the entrance on the west side of the home. The second request is for a retaining wall which is attached to the foundation of the proposed house and this retaining wall would be just outside of the road right-of-way. In making a decision on area variances, the Board takes into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. This is done by balancing five factors. Taking each factor in turn:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance? The Board finds that the granting of this variance would not create an unacceptable threat to the nearby properties because the use is consistent with the uses in the neighborhood – single family home – and the requirements of the Town’s Steep Slope plan will protect the neighborhood. The use itself, a single family home, is exact same character as the neighborhood.

2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? Although there are unique circumstances presented by the area topography, combined with the need to provide against

erosion and for proper drainage, make this approach the required methodology, the house could be smaller (the house has already been downsized).

3. Is the requested variance substantial? Based on the size of the lot the area variance for the rear set back is not substantial. The retaining wall variance is substantial, but the wall is necessary to make reasonable use of the land. The retaining wall is three feet lower than the roadways. There are similar walls down the road.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? No, the use is consistent with the neighborhood and presents no environmental impacts that were not considered when the subdivision was created and the code adopted. The Board acknowledges that a neighbor's complaints about the loss of view and increased traffic, but notes that any house, with or without variances, would present aesthetic impacts, and one house at an approved lot does not add measureable traffic impacts. The Board is aware of the concern over safety at the Sheriff's camp, which was not supported by an engineer or other evidence, while the application was supported by an engineer's submission, and there is no proof of any environmental impact. The variance lowers the negative environmental impact of placing the house closer to the Lake. Getting the cars off of the road increases neighborhood safety in that pedestrians walking to the Sheriff's camp would be forced into the roadway.

5. Whether the situation is self-created? The Board finds the need for the variances is not completely self-created, as the interplay of the topography of the lot and the rules creates difficulties requiring tradeoffs. For example, while the retaining wall provides an area that could be filled in to the south of the home and provide a space for parking and for

entrance to the garage, it also helps stabilize the road. Therefore the Board does not place a high weight on this factor because dealing with the realities of the steep banks are common in the Town, and it does not appreciably impact the lot or the neighborhood.

In finding that the variances represent the minimum required variance, the Board notes the house plan was downsized to fit and meet the required side yard lot lines and to help with erosion control and to negate storm-water runoff as much as possible, and the rear yard variance keeps the proposed home in an area that would not disturb the steeper area near the lake, thus the integrity of the lake would not be compromised. Avoiding portions of the variance request would have meant going closer to the lake but that would have caused other issues in regard to the steep slopes and risked damage to the lake.

Based on the balancing of the five factors, the Board approved the two variance applications