

Approved

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

September 9, 2010

The regular monthly meeting of the Town of Jerusalem Zoning Board was called to order on Thursday, September 9th, 2010 at 7 pm by Chairman Glenn Herbert.

Roll Call:	Glenn Herbert	Present
	James Crevelling	Present
	Jim Bird	Present
	Mike Steppe	Present
	Ed Seus	Present
Alternate	Jack Hoffer	Present
Alternate	Dwight Simpson	Present

Others present included: John F. Phillips/CEO, Bill Francisco, Sandy Spak, Max Parson/Town Bd., Dave McMillan, Peter McCarthy, Judson McCarthy, and Rolf Zerges.

A motion was made by E. Seus seconded by J. Crevelling to approve the August Zoning Board minutes as written. Motion was carried unanimously (5-yes, 0-no).

COMMUNICATIONS:

Zoning Board Members received a letter from Attorney Mark Venuti representing Theodore (Ted) Smith, the owner of property at 118 Rte 54A, PY, NY. Copy on file.

Yates County Planning Board referral applications reviewed and notice of actions taken.

Chairman G. Herbert and Zoning Board Members received a statement (dated September 9, 2010) and signed by two neighbors, immediately adjacent to the McCarthy property located on Esperanza Dr.

AREA VARIANCE / SPECIAL USE REVIEW:

OLD BUSINESS:

Area Variance Application #968 for Gerald McCarthy/Peter McCarthy for property located on Esperanza Rd. which has been owned by the same family since 1973 prior to the adoption of zoning. The requested area variance is to build a single family home on a pre-existing, non-conforming lot which has only 53 front feet at the front building line and lake shore and the required front footage is 75 feet in the lake-residential (R1) zone.

This application had been tabled from the July and August Zoning Board meetings. Chairman G. Herbert stated briefly that the public hearing (open portion) on this application was held on July 8, 2010 is closed. The zoning board members will be making a decision regarding this application at this meeting.

Mr. Zerges, an adjacent neighbor, to the McCarthy property, was present and asked to submit a final statement, on behalf of the neighbors, if the open portion of the meeting for this application is closed. Chairman G. Herbert responded that the open portion of the meeting is closed. If the statement is submitted it will not be part of the record.

Chairman G. Herbert thanked both the applicant and everybody involved in this application process, including the neighbors. He stated that this has been very emotional process on both sides and the decision has not been an easy one to make.

Chairman G. Herbert then made a motion to grant the area variance of 22 ft. for the lake front lot. The required lake frontage being 75 ft. and this lot, has 53 front ft. The motion was seconded by J.Crevelling.

Board Member E.Seus asked the Chairman if there was going to be a discussion and if they were going to read the test questions. Chairman G.Herbert stated that the test questions have already been done.

It was noted that the Yates County Planning Board determined that this action has no inter-municipal or county-wide impacts.

The poll of the board is as follows: G.Herbert-grant, J.Bird-deny, E.Seus-deny, J.Crevelling-grant, M.Steppe-grant. The motion was carried.

As the zoning board members were polled, each one respectively read their own statement as to how they arrived at their decision, based on review of the application and input from all involved. The respective statements follow as attached.

In granting this application the board finds that the benefit of the variance to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood. It is the minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood.

Zoning Board Member J.Bird expressed some frustration and concern that there are still portions of the zoning ordinance that are not clearly defined and could use some further clarification. As these areas of concern come up, he would like to have the zoning board refer them to the respective boards (Planning and Town Board) for review, as time permits.

Application #970 for Myron White owning property at 3269 Italy Friend Rd., Branchport, requesting a Special Use Permit to operate a Bed & Breakfast Facility at this location.

Due to a mix-up in the mailing address for this applicant, the letters of notification to the neighbors were not sent out, therefore this application will be tabled until the October 2010 Zoning Board meeting.

Application #971 for H. William Francisco owning property at 2101 West Lake Road, Penn Yan, NY to request an Area Variance to build an 8 ft. by 15 ft. 6 inch deck addition to an existing deck on the front of his home. An area variance is needed because the front yard set back for a lot located between the road and the lake cannot be met.

Board Member J.Bird excused himself from acting on this application, since he and the applicant are friends. Alternate J.Hoffer, had visited the site and will sit in for this application.

Mr. Francisco was present to answer questions for board members. He briefly summarized for the board members what his proposed plan would be. He asked if all the board members had received a copy of their survey which was redated as of 7/23/2010.

Mr. Francisco stated that their requested deck would not extend beyond the high-water mark and would be over an existing concrete bulkhead that is in existence. The proposed deck will not block the view of any of their neighbors, and will not project out as far as some of the neighbor's existing decks.

The distance requested by the applicant to the high-water mark is 8 ft. which is 7 ft. short of the required 15 ft. setback from the high-water mark.

The Yates County Planning Board reviewed this application and determined that the action of this application has no inter-municipal or county-wide impacts.

The board had not received any communications from neighbors with regards to this application.

There was a brief discussion regarding this application and if lot coverage is an issue. There does not appear to be any concern that the lot coverage would exceed the allowed 20%.

The area variance test questions were reviewed as follows:

1) Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties. (0=yes, 5=no) There are existing neighborhood properties that have decks extending closer to the high water mark than the applicant's proposed deck.

2) Whether the benefit sought by the applicant can be achieved by some feasible method other than an area variance (1=yes, 4=no). The applicant has existing concrete pad which is part of the bulkhead and covers the ground area, the proposed deck would extend partially over this area giving the applicant a view over the lake towards the south.

3) Is the requested variance substantial (3-Yes, 2-No). The requested variance is slightly over 53%.

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). No, there are similar properties in the neighborhood.

5) Whether the alleged difficulty is self-created (4-Yes, 1-No).

There were no letters from adjacent neighbors regarding this application.

A motion was made by M.Steppe and seconded by G.Herbert to grant this area variance with the condition that the deck come no closer than 7 ft. to the high water mark. That the deck is not to be enclosed, not to be used for living space, and if this structure is removed, this deck portion of the structure, that is being added, shall not be considered as part of the original footprint.

The motion was carried with a poll of the board as follows: E.Seus-grant, J.Crevelling-grant, J.Hoffer-grant, G.Herbert-grant, M.Steppe-grant.

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

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.

OTHER BUSINESS:

Real Estate Agent, Sandy Spak, was present with a letter from Attorney Mark Venuti, LLP, on behalf of Theodore (Ted) Smith, who is the owner of property located at 1183 Sylvan Dr. Penn Yan, NY formerly known as 118 Rte 54A Penn Yan, having Tax Map Number 61.23-1-37.

Board Members received copies of the letter from Attorney Mark Venuti, copy also on file.

Briefly, Ms. Spak described the situation with her client, Mr. Smith, basically the same information that board members were given a copy of in the letter from Mr. Smith's attorney.

Mr. Smith had purchased the property at 118 Rte 54A PY, in May of 2009. Prior to this time, in December of 2008, Mr. Smith was involved in a car accident. After spending about 2 weeks in rehab, felt he had sufficiently recovered and was optimistic about continuing to develop real estate for his own use and purchased the Jerusalem property. The demolition of the cottage and an existing shed took place in June/July of 2009. Mr. Smith had plans to rebuild on this same location. Following this time period, Mr. Smith's health began to deteriorate, and numerous health problems came about. Mr. Smith has been unable to go any further with plans for this property and is while he has recently been released from rehabilitation at the Seneca Falls Nursing Home, he can no longer live alone and must have continual care. Mr. Smith must sell his property, but through his Realtor and his Attorney, he is requesting an extension of time for this property to be considered as buildable property, in accordance with Article XIII, Section 160-57 (A), until at least the end of 2011.

Ms. Spak stated as the Realtor for this property that there have been buyers interested in this property if it can be using for building purposes.

It was noted by board members that if an extension is given for this property, that it would be from the standpoint of a remove and replacement situation. That other factors that might arise (regarding zoning codes, building and fire codes) would all need to be met. Ms. Spak noted that the sq. footage of the previous structures has been documented and that future owners would be making application to hook up to public water and sewer.

A motion was made by J. Bird and seconded by G. Herbert that based on the letter from Attorney Mark Venuti, with additional input from Realtor Sandy Spak, representing Mr. Smith, showing just cause for why the nonconforming use should be extended, that this lot shall be considered buildable as remove and replace noting that a replacement structure shall not exceed the sq. footage of previously existing structure(s) and that all other zoning and building code requirements shall be adhered to. This extension shall be considered to apply to this property from June 2010 to June of 2012.

The motion was carried with a poll of the board as follows: E.Seus-approve, J.Crevelling-approve, M.Steppe-approve, J.Bird-approve, G.Herbert-approve.

There being no further business for discussion, a motion was made by J.Bird and seconded by J.Crevelling to adjourn the meeting. The motion was carried unanimously (5-yes, 0-no). Meeting adjourned at 8:30 pm.

Respectfully submitted,
Elaine Nesbit/Secretary