

Approved

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

June 13, 2013

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, June 13th, 2013 at 7 pm by Chairman Glenn Herbert.

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

Others present included: John F. Phillips/Town CEO, Mike Folts/Town Bd., Mr. & Mrs. Schwartz, Terry Button, Deborah Mack, Dwight James/Contractor, and Joe Chiaverini.

A motion was made by J. Crevelling seconded by E. Seus to approve the May Zoning Board minutes as corrected. Correction to read as follows: page 2, paragraph 8 in the answer to the 1st Area Variance test question, last sentence, The building will be in the direct vision of the northwest site line of the neighbors to the south. The motion was carried unanimously.

Communications:

There were no communications.

AREA VARIANCE/SPECIAL USE REVIEW:

Application #1016 for Terry Schwartz owning property at 5449 East Bluff Dr. to request an Area Variance to add a covered open porch onto the lakeside of existing home that would have less setback from the high-water mark than zoning requires. The steps would come off from the north side of the porch.

Mrs. Schwartz stated that they would like to have a table out on the porch with chairs so that they could enjoy meals out there and enjoy watching the boats out on the lake.

It was noted that the front of the existing break wall also serves as the point from which to measure where the existing high-water mark is located for the determination of front yard set-back.

There was a discussion about the measurement to the high-water mark and the distance has to include the closest part of the structure which more often than not, is the roof overhang. This could be a foot wide or it could be ½ of a foot but there is usually a rain gutter attached as well. This has to be figured into the distance to the high-water mark.

At least two board members were concerned about issuing an area variance of more than 50% in close proximity to the high-water mark.

Bd. Member J. Crevelling stated that he has concerns about the added runoff from the impervious porch roof, unable to percolate into the soil but go into the lake vs. the benefit to applicant; whereas now, the rain has the ability to absorb into the permeable soil. He added that this is a very beautiful site and is very well kept.

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) G.Herbert-no, J.Crevelling-yes, E.Seus-yes, 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: (1-yes, 4-no) G.Herbert-no, J.Crevelling-no, E.Seus-yes, D.Simpson-no, R.Williams-no.
3. Whether the area variance is substantial: (5-yes, 0-no). The request is more than 50% allowed
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood: (3-yes, 2-no) G.Herbert-no, J.Crevelling-yes, E.Seus-yes, D.Simpson-no, R.Williams-yes. The coverage would prohibit water runoff from being absorbed into the soil causing a negative environmental impact.
5. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (5-yes, 0-no).

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

A motion was made by G. Herbert to restrict this Area Variance to an 8 ft. deck with a flush overhang with the distance as measured to the high-water mark no closer than 7 ft.

The motion was carried with a poll of the board as follows: E.Seus-deny, R.Williams-grant, J.Crevelling-deny, D.Simpson-grant, G.Herbert-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 #1017 for Terry Button and Deborah Mack owning property at 7240 West Bluff Dr. requesting an area variance to build a new single family home with a deck/porch on the side facing the road that would be closer to the front yard property line than zoning allows. The requested setback would be 47 ft. from the center of West Bluff Dr. to the closest point of the structure which would be the deck.

Mr. Button and Ms. Mack were present to answer questions for the board members along with their contractor, Dwight James (DJ Builders).

There were questions from one board member about pushing back farther to build the house and meet the required setback. It was noted by the contractor that yes there is room to move back, however the grade goes up very quickly and it becomes quite steep. They have had engineers out there as well as CEO Phillips, and at some point the question has to be asked how high of a retaining wall do you want to put in to hold back the bank. He noted that there had been an original plan to put a garage behind the structure, but that plan had changed due to the steepness of the bank and the plans of how high a retaining wall would have to be to support this type of structure.

The contractor also noted that if the area variance is approved, the next step will be to have engineer plans drawn and an application for Steep Slopes to go before the Planning Board. It was also noted that an engineered septic system will be planned out in the area to the east of where the home will be built.

There was more discussion regarding the location of homes on either side of this site location. The location for these home sites was most likely carved out of the hillside at a time prior to the adoption of the Steep Slopes law.

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 (0=yes, 5=no).
2. Whether the benefit to the applicant can be achieved by some other feasible method than an area variance (5=yes, 0=no) It could be placed farther up the hill, but the engineering problems would be much greater, causing greater disturbance to the hillside.
3. Whether the area variance is substantial (5=yes, 0=no). The request is substantial, but it is a negative point, any excavation into the natural contour of the land is substantial, noting that a steep slopes application will be required.
4. Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district. (1=yes, 4=no) G.Herbert-no, J.Crevelling-Yes, E.Seus-no, D.Simpson-no, R.Williams-no. This is substantial variance request from the required 65 ft.
5. Whether the alleged difficulty is self-created: (4=yes, 1=no) G.Herbert-yes, J.Crevelling-yes, D.Simpson-yes, E.Seus-yes, R.Williams-no. There is room to move it back but again, the detriment to the hillside and environment would be adverse.

The board members talked briefly about the building down at the lake. Ms. Mack stated that it is a beach house and they use it simply as that. The structure was there when they purchased the property and they did some finishing on the inside of it that hadn't been done. They have not stayed in it overnight and it is not used as a living facility. There is no water in or out. There is a chemical burn toilet inside and a port-a-john up above for when they have guests and picnics at the lake. D.Simpson stated that his concern was that it only be used for a beach house not to be used for living purposes.

He noted that this has been an issue in the past. CEO Phillips stated that when Mr. Button and Ms. Mack purchased the property he had informed them about the things they could and couldn't do with this building. It was also noted that this building is only approximately 300 sq. ft. in size which is about ½ the required size for a structure that is to be used for living purposes.

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

A motion was made by E.Seus and seconded by D.Simpson to grant this Area Variance as requested with the new home to come no closer to the center line of West Bluff Dr. than 47 ft. as measured from the center of West Bluff Dr. to the closest point on the house which is to be the open deck/porch on the east side of the home. This is an 18 ft. variance.

The motion was carried with a poll of the board as follows: G.Herbert-grant, J.Crevelling-grant, R.Williams-grant, D.Simpson-grant with his concerns as stated earlier about the structure on the beach front remaining as just a beach house, not to be used for living purposes, E.Seus-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.

OTHER BUSINESS

There was a brief discussion by Town Board Member M.Folts regarding the location of where measurement begins for front yard set-back distance for a lot located on the upper side of the road away from the lake. It was noted that from the center of the traveled way to the closest part of the proposed structure shall be a minimum of 65 ft. This has not changed since the zoning ordinance was written. The height of accessory buildings has changed from 15 ft. to 20 ft. if they are located on the upper side of the road, but remain at an allowed height of 15 ft. if they are located on the lake side of the road.

CEO Phillips stated that prior to the purchase of this property by Mr. Button and Ms. Mack, he had to keep a very watchful eye on the property since the prior owner pulled a permit for the beach house and they were wanting to make it bigger and have its use be more than what a beach house was supposed to be used for.

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

Respectfully submitted,
Elaine Nesbit/Secretary