

Town of Jerusalem
Zoning Board of Appeals

June 14th, 2018

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, June 14th, 2018 at 7 pm by Chairman Glenn Herbert.

G. Herbert asked all to stand for the pledge to the flag.

Roll Call:	Glenn Herbert	Present
	Rodgers Williams	Excused
	Ed Seus	Present
	Earl Makatura	Excused
	Joe Chiaverini	Present
Alternate	Kerry Hanley	Present
Alternate	Ken Smith	Present

Others present included: Ryan Wade, Dave Cleveland, Attorney Jackie Ledgerwood, Connie Felder, Mark Sennett, Samantha Bickfold, Adam Hornzan, Zac DeVoe/CEO, Jamie Sisson/Town Bd, Dan Grace and Kara Eastwood, Charles Smith/Design Works Architecture, and others.

A motion was made by K. Smith and seconded by G.Herbert to approve the May Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS:

There were no communications.

AREA VARIANCE/SPECIAL USE REVIEW:

Application #1128 for Dan Grace and Kara Eastwood for property at 7675 East Bluff Dr., Penn Yan, NY requesting an Area Variance to build a 16 ft. by 24 ft. 2-story addition onto a basement that would be an extension to an already pre-existing, non-conforming building. The area variances requested are for a rear yard set-back of 42 ft. 7 in. from the center of East Bluff Dr. where 45 ft. is required and 13 ft. 7 in. from the high water mark where 15 ft. is required. This property is located in the (R1) Lake-Residential Zone.

Dan Grace and Kara Eastwood were present with their Attorney Jackie Ledgerwood to discuss their application which was tabled from the May Zoning Board meeting.

Chairman G.Herbert stated that this application was a very difficult one for the zoning board to deal with. He noted that this is not the only one that the board has had to review in the past few months. They recently denied an application for an area variance for a very similar request which was the expansion of a pre-existing, non-conforming building located in the (R1) Lake-Residential Zone.

He stated that there are many pre-existing, non-conforming properties and buildings that are out there that when they come before the board, they have to be dealt with in accordance with the zoning code guidelines that deal with non-conforming issues as well as with issues of restoration.

He noted that many times real estate agents and prospective buyers are not diligent in checking out the Zoning issues for a piece of property prior to purchasing. This makes it very difficult for a zoning board to have to deny a request for an Area Variance application when asked to approve something that is pre-existing, non-conforming that had nothing to do with the current owner who may have just purchased the property or has only owned it for a short period of time. Sometimes the only recourse might be to remove and replace a structure.

The Attorney for the Town has addressed this issue of continuance of non-conformance for the zoning board and has been quite clear about the guidelines of the zoning code for this issue.

Attorney Jackie Ledgerwood spoke on behalf of her clients and stated that while she understood what Chairman G. Herbert had said, she felt that there was some room for the board to consider under the five test questions that there was some room for the board to use some discretion with regards to the granting of this application. That the granting of this application would not be as great a detriment to nearby property owners versus the detriment to the property owners by not granting the area variance.

In addition they are trying to improve the property and make it look better. Attorney Ledgerwood also noted that the prior owner had been granted an Area Variance.

Chairman Herbert stated in accordance with Article XIII, Section 160-56 (B) that the present building being pre-existing and non-conforming was prohibited from being enlarged, extended, or increased unless such enlargement would tend to reduce the degree of nonconformance.

E. Seus asked about the Area Variance granted to the previous owner. It was noted that Area Variance #1028 which was granted in 2014 to the previous owners was given because there was also a pre-existing cottage on this lot which made for two dwellings on one property. The property owners proposed to remove the existing cottage and add on to the boathouse structure with an addition that would require a rear and front yard setback. The zoning board eventually granted the area variance for a downsized addition since the board reasoned that the property owner was removing one of the existing dwellings and making one dwelling unit by adding on to the existing boathouse that had living space inside of it.

This board determined that although the area variance was granted by a prior zoning board, that the prior owners had never started the addition and therefore the cottage was demolished and the new addition was not added. The pre-existing, non-conforming condition has timed out and therefore the area variance is no longer valid.

There was more discussion among board members with regards to this application and the action of a prior Zoning Board along with the fact of how do many of the changes get made to similar properties on the lake.

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

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: (5-no, 0-yes).

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

3)Whether the requested area variance is substantial: (5-no, 0-yes)

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

5)Whether the alleged difficulty was self-created: (4-yes, 1-no) G.Herbert-yes, E.Seus-yes, J.Chiaverini-yes, K.Hanley-no, K.Smith-yes.

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

A motion was made by E.Seus and seconded by K.Hanley to grant Area Variance application #1128 for the addition to the existing building as applied for. The motion was denied by a poll of the board as follows: J.Chiaverini-deny, K.Smith-deny, G.Herbert-deny, K.Hanley-grant, E.Seus-grant.

Application #1129 for Chris Wade for property at 1253 Sylvan Dr., Penn Yan, NY 14527 requesting an Area Variance to replace an existing 280 sq. foot deck that was given a building permit in 1987 but did not go through the area variance process at that time. The current deck structure is unsafe and in need of repair and therefore the reason for a building permit along with an application for an area variance which is needed due to the increase in lot coverage that was created by the building of the deck in 1987. The lot coverage is at 24% with this deck.

G.Herbert stated that while the board could deny the area variance for the rebuilding of the deck, it has been there for many years, does not block anyone's view of the lake and essentially its existence is a non-issue at this time. The area variance application is basically varying the extra lot coverage to allow for the deck that has been there for many years.

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

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: (5-no, 0-yes).

2)Whether the benefit to the applicant can be achieved some other feasible method than an area variance: (4-no, 1-yes) G.Herbert-no, E. Seus-no, J.Chiaverini-no, K.Hanley-yes, K.Smith-no.

3)Whether the requested area variance is substantial: (3-no, 2-yes) G.Herbert-no, E.Seus-no, J.Chiaverini-yes, K.Hanley-no, K.Smith-yes.

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

5) Whether the alleged difficulty was self-created: (4-yes, 1-no) G.Herbert-yes, E.Seus-yes, J.Chiaverini-yes, K.Hanley-no, K.Smith-yes.

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

A motion was made by G.Herbert and seconded by E.Seus to grant application #1129 for the 10 ft. by 28 ft. deck to be replaced as requested. The motion was granted with a poll of the board as follows: K.Hanley-grant, K.Smith-grant, J.Chiaverini-grant, E.Seus-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

Application #1130 for Camp Good Days and Special Times for property at 643 West Lake Rd., Branchport, requesting an Area Variance to build an approximately 1800 sq. ft. addition to the existing recreational building at the camp. The area variance request is for the height of the building to be 34 ft. where 15 ft. is allowed for accessory structures. The function of the building will be to house and display memorabilia and items collected over the years to illustrate the history of the camp. There will be a small deck on the east side of the building that will be approximately 5 ft. off the ground.

Mark Sennett was present to represent the Camp along with the architect who explained about the drawings of the proposed structure. Briefly it was stated that the building was to be a one story museum which will have information telling about the people and history of Camp Good Days.

G.Herbert asked if the building was going to be one story, why was there a need for the building to be so tall.

The architect stated that one reason is because the ground slopes to the east and he indicated on the drawing of how this affects the height of the building. The architect also mentioned that with the roof pitch they didn't want to go to flat because it would not match up with the recreational building that it was being attached to. He also noted that while the original plans state that the height of the proposed building is to be 34 ft. there was a change reducing the height to 30 ft. as requested by Planning Board members who had seen the original plans.

G.Herbert stated that variances for 20 ft. height of accessory structures are what the zoning board has generally been allowing.

Other board members had little comment stating that they did not have a problem with this application since Camp Good Days also owns the property directly across the road from this property.

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

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: (5-no, 0-yes).

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

3)Whether the requested area variance is substantial: (0-no, 5-yes).

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

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

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

A motion was made by J. Chiaverini and seconded by G.Herbert to grant application #1130 with the condition that the height of the proposed accessory building be no greater than 22 ft. as measured from the average elevation of the proposed finished grade at the building's lowest side elevation to the highest point of the rooftop.

The motion was carried with a poll of the board as follows: E.Seus-grant, K.Smith-grant, K.Hanley-grant, G.Herbert-grant, J.Chiaverini-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

CEO asked if the building permit could be issued at this time or should he wait until Camp Good Days representatives have met with the Planning Board for a Site Plan update. It was the consensus of the Zoning Board that they meet with the Planning Board at their July meeting before proceeding with the new building.

Application #1131 for Dave & Monica Cleveland for property at 9675 East Bluff Dr. requesting an Area Variance to build a bathroom addition on the west side of existing cottage with less setback from the rear yard property line than zoning requires.

Board member K.Smith recused himself from the review of this application since he is a neighbor to the Clevelands.

Dave Cleveland was present to describe the proposed new building to the zoning board. He noted that he had received an area variance in 2013 for the existing mudroom that is located on the west side of his cottage. It also required a variance from the rear yard property line.

The area variance application that he is applying for that would allow for the proposed bathroom addition will be placed along the west side of the cottage north of the mudroom, but will be 33 ft. at its closest point as measured from the center of the road to the proposed building including the roof overhang. The setback being requested is farther away from the center of the traveled way than the Mudroom which was built in accordance with the previous Area Variance. In building this proposed bathroom addition, as you move to the north the distance from the center of the road becomes greater.

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

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: (4-no, 0-yes).

2)Whether the benefit to the applicant can be achieved some other feasible method than an area variance: (4-no, 0-yes).

3)Whether the requested area variance is substantial: (4-no, 0-yes).

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

5)Whether the alleged difficulty was self-created: (4-yes, 0-no).

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

A motion was made by G.Herbert and seconded by K.Hanley to approve Area Variance Application #1131 to allow the construction of the proposed addition to come no closer than 33 ft. to the center of the traveled way as measured to the closest part of the addition including the roof overhang.

The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E.Seus-grant, K.Hanley-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

Application #1132 for Mike Quinn for property at 3003 West Lake Rd., Penn Yan, NY requesting an Area Variance to replace an existing deck from one which was built in 1985 having been issued a building permit but which should have had an area variance because of the increase in lot coverage to 31%. The contractor, Jamie Sission, was present for the applicant, noting that the deck to be replaced is 660 sq. ft.

It was noted by Chairman G.Herbert that this deck has been in place for many years with no one objecting to it and the fact that it does not obstruct anyone's view.

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

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: (5-no, 0-yes).

2)Whether the benefit to the applicant can be achieved some other feasible method than an area variance: (4-no, 1-yes) G.Herbert-no, E. Seus-no, J.Chiaverini-no, K.Hanley-yes, K.Smith-no.

3)Whether the requested area variance is substantial: (3-no, 2-yes) G.Herbert-no, E.Seus-no, J.Chiaverini-no, K.Hanley-yes, K.Smith-yes.

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

5)Whether the alleged difficulty was self-created: (4-yes, 1-no) G.Herbert-yes, E.Seus-yes, J.Chiaverini-yes, K.Hanley-no, K.Smith-yes.

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

A motion was made by G.Herbert and seconded by K.Smith to grant the Area Variance application for a replacement deck not to exceed the sq. ft. so that the lot coverage would be at the 31% which came about as a result of the building permit issued in 1985 for the deck without an Area Variance. The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E. Seus-grant, K.Hanley-grant, K.Smith-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

OTHER BUSINESS:

There being no further business, a motion was made by K.Hanley and seconded by G.Herbert to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned.

Respectfully submitted,

Elaine Nesbit/Secretary