

**TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS**

April 12, 2007

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order by Chairman Ron Rubin on Thursday April 12th , 2007 at 7 pm.

Roll Call:	Ron Rubin	Present
	Glen Herbert	Present
	Jim Jameson	Present
	Bob Fox	Present
	Jim Bird	Present

Others present: Jim Creveling/Zoning Bd. Alt., John Phillips/CEO, Mike Folts/Town Bd., Gary Olin, William and Sharon Olin, Bob Hawley, Ed Seus, Mr.& Mrs. Dave Kennedy, Mr.& Mrs. Garrison, Richard Dever, and Bob Evans.

A motion was made by J.Jameson and seconded by G.Herbert to approve the March Zoning minutes as written. Motion carried unanimously (5-yes, 0-nays).

**COMMUNICATIONS**

All communications received relevant to the applications to be reviewed were distributed to board members. Copies are on file with each respective application.

**AREA VARIANCE REVIEW**

Application #892 for property on Guyanoga Rd. owned by David Kennedy requesting an area variance to build a 42' x 75' pole building with placement of the building 20 feet from the north side yard property line. There would be an 18 ft. end door with a 12 ft. to 14 ft. side door. Zoning requires a 40 ft. side yard setback for accessory structures in the Ag-Res. Zone.

Mr. Kennedy presented his application and his reasons for his request to the board members. Mr. Kennedy told the board at the beginning of the application review, that after he had a surveyor establish his north property line, it appeared that he could actually place the building 30 ft. from his north property line, therefore he asked to amend his area variance application requesting to place the building at 30 ft. from the property line.

Mr. Kennedy presented a map showing his property and the fact that this particular area is somewhat narrow (approximately 150 ft.) from the north property line to the small watercourse that runs along the south side of this field.

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Mr. Kennedy stated that while he owns 120 ± acres of land on the east side of Guyanoga Road, there is a rather large portion that is part of the floodplain near sugar creek. This area is pretty much off-limits due to DEC regulations, etc. He noted that the particular field he wished to use for his building, has a very gradual approach from Guyanoga Road allowing better access for trucks, tractors, etc., while the rest of this land going south has quite a steep approach from the road.

Mr. Kennedy stated that he has someone interested in leasing the farmland to plant corn. As for the building itself, he would be storing farm related equipment inside and some space could be used by the person leasing the land for machinery storage.

A question was asked about a future bathroom being placed in the building. Mr. Kennedy stated that while he himself did not plan to do this, he was trying to look ahead to setting up the building so that should there be interest by a future owner to put a bathroom in, there would be sufficient distance and space for a septic system. The small watercourse which traverses this property has been known to overflow its bank when we have prolonged periods of steady rain or very short heavy rains with a lot of runoff.

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

The area variance test questions were reviewed as follows: #1(0-yes, 5-no) #2(5-yes, 0-no) #3(1-yes, 4-no) #4 (0-yes, 5-no) #5 (5-yes, 0-no).

A motion was made by R.Rubin and seconded by J.Bird to deny this amended application based on the determination that there is enough room for the applicant to build this building and meet the required side yard setback.

The motion was carried as follows: B.Fox-deny, G.Herbert-deny, J.Jameson-deny, R.Rubin-deny, J.Bird-deny.

Application #893 for Mr. & Mrs. Garrison owning property on West Bluff Dr. adjacent to 352 West Bluff Dr. requesting an area variance for a rear and front yard setback for a set of stairs with landing for beach access. The required front yard setback is 15 ft. from 715.15 ft. and a 20 ft. rear yard setback to the edge of the road right-of-way.

Mr. & Mrs. Garrison presented their application and answered questions for board members.

There were questions about the stairway that is partially located on the south side of their property. Mrs. Garrison stated that it was there prior to their purchase and that it belonged to the neighbor to the north.

There is an agreement in their deed that at their request the adjacent neighbor has a year to remove the encroaching stair structure.

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Mrs. Garrison stated that she and her husband have used their neighbor's stairs for access but they really want to have their own set of stairs.

It was noted by Mrs. Garrison that she had discussed building options with her contractor, Mr. Fladd and she had originally wanted to use flag stones for building the stairway. Due to the steepness of the bank it is impractical to build the access this way. Mrs. Garrison stated that the upper area would still be done with flag stones. There was further discussion about the landing areas proposed and Mrs. Garrison stated that she would now probably have only one landing and that the stairs would be built in such a way as to switch back and forth so as to traverse the side of the bank and not be as steep as a set of stairs that would go straight down. It was also the wish of the property owners to have as minimal disturbance to the bank as possible.

There were no neighbors present to speak to this application and no correspondence had been received.

The area variance test questions were reviewed with the following results: #1 (0-yes, 5-no) #2 (0-yes, 5-no) #3 (2-yes, 3-no) #4 (0-yes, 5-no) #5 (3-yes 2-no).

There was some discussion by board members as to know exactly what variances were being given. It was noted that the wooden part of the stair structure would need to start just out of the highway right-of-way and that the landing would be approximately half way down the bank with the remaining stairs continuing from the landing on down to the beach area. The beach itself being quite narrow, it would appear that the stairs would probably be at or very close to the 715.15 mark. Discussion continued regarding the size of the proposed landing. It was agreed that there needed to be definite size given that could be built. Mrs. Garrison stated that she would like to be able to put at least two chairs on this landing area for a place to sit and due to the fact that the flat beach area is so narrow it would give them a place to sit.

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

A motion was made by J. Jameson and seconded by G. Herbert to grant this area variance to allow the wooden stair structure to be built no closer than 25 ft. to the center of the road, that the deck landing is to be no larger than 64 sq. ft. and that the

remaining steps would terminate no further towards the lake than 715.15 ft. This area variance is granted due to the steepness of the lot and the narrowness of the beach area and it will allow the property owners to have access to the beach with minimum disturbance to the bank.

\*

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 no alter the essential character of this locality.

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Application #894 for Richard Dever owning property at 3732 Rte 54A Branchport requesting an area variance to replace a side porch on the east side of the existing structure which will be closer to the front yard setback than zoning allows. The required front yard setback in this B1 zone is 40 ft. The pre-existing structure itself is closer to the front yard property line the replacement porch will be.

Mr. Dever was present to discuss his request and to answer questions for board members.

Mr. Dever stated that there would be putting a second story deck over the side replacement porch but that its' width would not extend beyond the existing roof overhang. There are currently no windows on that side of the house on the second floor. Mr. Dever stated that the house will be used for the present time as a vacation home with the possibility of it becoming their permanent home in the future. The second story deck would be accessed from the master bedroom. The upper and lower decks will remain open.

The steps will be replaced closer to the road than allowed but they will not extend beyond the front southeast corner of the existing structure. There was some discussion about the steps being directed towards the parking area that belongs to this lot. Mr. Dever stated that the topography here is such that it drops off quickly and he would still require some kind of landing after coming out of the porch to make the turn to go down the stairs so they would not gain any setback advantage by doing this.

The Yates County Planning Board reviewed this application and recommended that this application be approved.

There were no neighbors present to speak regarding this application and no correspondence had been received.

The area variance test questions were reviewed with the following results: #1(0-yes,5-no) #2(0-yes, 5-no) #3(2-yes, 3-no) #4(0-yes, 5-no) #5(5-yes, 0-no).

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

A motion was made by J.Bird and seconded by R.Rubin to grant this application as requested noting that the replacement porch is not to extend beyond the southeast corner of the existing structure as noted on applicant's submitted site plan.

Decks are to remain open not be enclosed. For future reference, the decks are not to be considered as part of the original footprint of the house.

It is also noted that the existing structure as measured from the southeast corner of the house wall is approximately 7.9 ± ft. from the front property line in accordance with a survey filed with the application.

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The motion was carried with a poll of the board as follows: J.Jameson-grant, B.Fox-grant, G.Herbert-grant, R.Rubin-grant, J.Bird-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 area variance will not be injurious to the neighborhood nor alter the essential character of this locality.

Chairman R.Rubin announced that there would be a five minute break to give board members a chance to review communications received before hearing the last application.

After the break Chairman R. Rubin called the meeting back to order.

Application #895 for William and Sharon Olin owning properties at 650 and 650a West Bluff Dr. to request area variances to keep the lots subdivided as non-conforming lots in that they do not meet the required 75 ft. at the road (the front building line).

Sharon and William Olin were present as was Gary Olin (brother-in-law) who spoke to the board on their behalf. Mr. Gary Olin gave briefly described the history of this property indicating that Kirk Olin (a family member) and Sharon Olin jointly purchased the property back in the 1960's and had each built a separate cottage on the single piece of property. This pre-existing lot was 100 ft. wide at the front building line. Zoning was adopted in 1974 and in 1998 Kirk Olin, wishing to sell his cottage and lot, requested a subdivision of the property. This subdivision approval was given by the Jerusalem Planning Board in 1998 (copy of the minutes on file) with subsequent filing of the deed and the approved subdivision at the Yates County Clerk's Office. The Planning Board, while having subdivision authority, however, lacked the authority to approve the division of one lot into two non-conforming lots. The Planning Board in reviewing the requested subdivision

looked at the lot as being pre-existing non-conforming by having two principal dwellings on one lot. The creation of the two lots removed one pre-existing non-conformity but created another one, in that the lots did not meet the required 75 ft. at the front building line (that being the road). Each lot was given 50 ft. of lake frontage. The lots themselves were conforming with regards to having well in excess of 20,000 square feet meeting the minimum lot requirement.

Because of the subdivision, two separate tax accounts were established each having a principal structure and separate taxes have been paid on both accounts. The property was sold (within the family) two different times, at fair market value. Presently the north parcel has a mortgage attached to it which would create a hardship financially if the area variance is not approved. It was also noted that in 1979, Kirk Olin had requested an area variance from the Zoning Board which was denied, because it lacked the necessary 75 ft. at the front building line. There are additional issues regarding the two decks that are attached to each individual structure, that are in question as to when they were built and if built after 1974 each would have required an area variance because of their proximity to the side yard lot lines.

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The cottages themselves are closer to the side yard lot lines than the required 10 ft. per the zoning regulations. This issue, however, will be addressed at a later time. The center line dividing the one parcel into two separate parcels, created a new side yard lot line for each parcel, however, both dwellings were not affected by the dividing line from a setback standpoint. Each dwelling has its own septic system and water line.

CEO John F. Phillips stated that a letter of complaint from a neighbor alleging the illegality of the created tax parcels is what started the review of these properties and the subsequent notice of violation to the property owners who then filed an application for the area variances with respect to each lot being allowed to remain as subdivided.

There appears to be some issues between the Olins and the adjacent neighbor to the north regarding the proximity of the deck on the north cottage. There was an addition to this deck (whether there was a building permit or not is still being looked into) which according to G.Olin had a verbal agreement between the former owner and the neighbor, Mr. Swingle, that the deck could be extended as long as there was a privacy fence put in.

Chairman R. Rubin stated that the subdivision creating two non-conforming lots was what the Zoning Board is presented with and asked to make a decision on regarding whether to grant an area variance.

Board Members received communications from two adjacent neighbors, Mr. Schuman and Mr. Swingle (copies on file with application).

R.Hawley, speaking on behalf of Mr. Swingle, addressed the board regarding the illegality of the subdivision and stated that in his opinion, this zoning board should uphold the decision of the former zoning board and deny this application and require the lot to be put back as it was prior to the subdivision.

Zoning Board Member, J.Bird stated that he had been trying to weigh the advantages and disadvantages for allowing the two lots to remain as they are or making them become as one parcel again. In his review, he stated that he did not feel that the disadvantages outweighed the advantages in that by having two separate parcels, there are two tax bases, two separate lots each having its own primary dwelling, as well as separate septic systems and separate water lines.

R. Hawley stated that perhaps the neighbor would like to subdivide his property (having 105 ft. of lake frontage) and wished to split it with each having 50 ft. of frontage.

J.Bird stated that it probably would not get approval because of the different circumstances involved. There was additional discussion regarding the one boat dock on the northern parcel that is used by both properties, even though each has its own separate 50 ft. of frontage.

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Zoning Board members struggled with making a decision regarding whether to grant the variance to leave the two lots as they are (two separate tax parcels) or to deny the variance and have the lots be deed back together as one. The issue does not seem to be the circumstances of the lots being left as they will not change anything but the fact that by granting the variance, it would recognize the \*creation of the two lots and the fact that they do not have 75 ft. at the front building line.

E.Seus asked if there are other 50 ft. lots on Keuka Lake. The answer is yes, but for the most part these lots were pre-existing zoning.

The area variance test questions were reviewed with the following results: #1(4-yes, 1-no) #2(0-yes, 5-no) #3(4-yes, 1-no) #4(3-yes, 2-no) #5(2-yes, 3-no).

Board Members are in agreement that this is a SEQR Type II action.

A motion was made by J.Bird and seconded by G.Herbert to grant the area variances as applied for to keep the lots separate \* based on the fact that as two separate tax parcels they are paying separate tax bills. The existing conditions will not be changed by denying the variances, i.e. the existing buildings remain in their

same location. Their proximity to the respective side yard property lines will not change in that either as one or two separate lots, they fail to meet the respective north and south side yard property lines as built pre-existing zoning. The subdivision line in the center creates a new north and south side yard property line respectively. This motion is not setting a precedent in that the zoning board is not in favor of the formation of lots being formed with only 50 ft. of frontage at the front building line, however, given the circumstances of this particular property, and the history that accompanies these properties, the zoning board feels that it is in the best interests of the Town to grant these variances. This motion does not recognize any other violations these properties may have, it is only approving the two parcels to remain subdivided.

The motion was carried with a poll of the board as follows: J.Bird-grant, J.Jameson-grant, R.Rubin-grant, G.Herbert-grant, B.Fox-grant.

In granting these area variances 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. These area variances will not be injurious to the neighborhood nor alter the essential character of this locality.

## **OTHER BUSINESS**

M.Folts stated that the Town Board has two people that answered the ad for the alternate position to the Zoning Board. It was discussed that since there is another Zoning Board

Meeting scheduled for Tuesday, April 24th at 7 pm that they could have the interviews earlier that evening.

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It was agreed that any board members that wished to be part of the interviewing process would meet at 6 pm and the interviews would be scheduled.

There being no further business, a motion was made by R.Rubin and seconded by B.Fox to adjourn the meeting. The motion was carried unanimously (5-yes, 0-no). The meeting was adjourned at 9:30 pm.

Respectively submitted,

Elaine Nesbit/Secretary