

Approved

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

May 8, 2008

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, May 8<sup>th</sup>, 2008 at 7 pm by Chairman Ron Rubin.

Roll Call:	Ron Rubin	Present
	Glen Herbert	Present
	Jim Bird	Present
	Jim Crevelling	Present
	Mike Steppe	Present
Alternate	Ed Seus	Present

Others present included: Jerry Kernahan, Tim Curtin, Mary Worboys, Lin Hough, Dave & Edna Hamlin, Ian S.Wydra, Ron Williams, Eric Johnson, Rosalind Paul, Vince Volland, and Heidi Bauer.

A motion was made by J.Bird, seconded by J.Crevelling to approve the April 10<sup>th</sup>, 2008 Zoning Board minutes as written. Motion carried unanimously (5-yes, 0-no).

#### COMMUNICATIONS

Chairman R.Rubin stated that board members had received copies of letters (on file) which would be referenced with the particular application that they refer to.\

#### OLD BUSINESS

Application #928 for Ron Williams owning property at 767 East Bluff Dr. to request an Area Variance to expand on a non-conforming building.

Chairman R.Rubin stated that Alternate Board Member Ed Seus would participate on this application instead of G.Herbert, who was not in attendance at the April meeting.

This application was tabled so that Chairman R.Rubin could obtain legal counsel from the Town Attorney for the Zoning Board.

Mr. Williams was present for the board to continue with review of this application.

R.Rubin stated that he would try to summarize the information that was given by Attorney Bailey. The first reference from the Zoning Ordinance was Section 160-56 from Article XIII concerning a legal non-conforming use not to be expanded .

As this section of the ordinance pertains to this application the conclusion drawn is that an illegal non-conforming building shall not be further expanded.

The other issue is how this affects or impacts the neighborhood as a whole as well as the immediate neighbors. The section referenced is Town Law Section 267 the Zoning Board is required to balance the benefit to the applicant versus the detriment to the health, safety, and welfare of the neighborhood or community. The Zoning Board is strongly urged to use the test questions to make this determination.

Chairman R.Rubin stated that this was an arms length sale to Mr. Williams and despite the fact that he inherited most of the problems concerning this property and lacking the proper building permits and variances, this does not remove the illegality of the structure.

Having said that, Chairman R.Rubin stated that he would read the test questions, so that they could be answered and made part of the record.

The variance being requested is to expand an illegal non-conforming building by enclosing the upper deck and making it part of the living space. A portion of the building itself is already past the highwater mark. Mr. Williams stated that he was only trying to correct a problem of a deck which is a roof that leaks and is a yearly problem that has to be repaired.

The test questions were read and the answers as follows: #1(5-yes, 0-no); #2(0-yes, 5-no); #3(5-yes, 0-no); #4(4-yes, 1-no); #5(4-yes, 1-no).

Chairman R.Rubin stated that this is an illegal non-conforming property which is proposed to be modified and based on the referenced sections of the Zoning Ordinance and Town Law, and the test questions just reviewed he would make a motion to deny this application because the ordinance prohibits the board from expanding on a legal non-conforming use and therefore would prohibit the expansion of an illegal non-conforming use. The motion was seconded by M.Steppe and carried with a poll of the board as follows: E.Seus-deny, J.Crevelling-deny, J.Bird-deny, M.Steppe-deny, R.Rubin-deny.

Mr. Williams then stated that there did not seem to be any alternative to fixing the problem of the leaking roof. He then asked if he could remove and replace and what could be replaced. Chairman R.Rubin stated that this would be a matter that would need to start with the Code Enforcement Officer.

## NEW BUSINESS

Application #929 for property owned by Dennis & Penny Murphy owning property at 2966 Rte 54A, Penn Yan to request a Special Use permit to operate Murphy's Corner Market on the 1<sup>st</sup> floor and the 2<sup>nd</sup> floor to be converted from office space to a single family apartment to be rented.

The apartment use for single family dwelling on the 2<sup>nd</sup> floor is an allowed use in the Ag-Residential District. The 1<sup>st</sup> floor use as a grocery/deli requires a special use permit.

Mr. Gerald Kernahan was present as engineer for and representing the Murphys. Mr. Kernahan stated that he had missed the May Planning Board meeting, so would be going before them in June. Chairman R.Rubin stated that while the Zoning Board could not take any action on this application until after the Planning Board review, the board would hear any comments from the applicant or neighbors.

Mr. Kernahan stated that he had the plans for the building and how it is to be set up. In addition he stated he was working on a septic system design for the store/apartment.

The Yates County Planning Board has reviewed this application and has recommended approval.

Chairman R.Rubin stated that the Planning Board will be sending along the SEQR decision along with its recommendation for the grocery/deli. The Planning Board takes action on the Site Plan.

It was noted that the conversion of the office space to a single family apartment on the 2<sup>nd</sup> floor is an issue which involves the CEO and the applicant meeting the NYS Building and Fire Codes. The use as an apartment is an allowed use in the Ag-Res zone but must meet all the codes for safety, fire exits, etc. prior to the grocery/deli being allowed to open and operate. G.Kernahan noted that these requirements are noted on page 3 of his submitted design drawings for fire separation areas, exits, etc.

Board members noted the 1<sup>st</sup> floor grocery/deli layout and the 2<sup>nd</sup> floor as well.

There being no further questions, a motion was made by J.Bird and seconded by J.Crevelling to table this application until the June Zoning Board meeting. The motion was carried with a poll of the board as follows: M.Steppe-table, G.Herbert-table, R.Rubin-table, J.Crevelling, J.Bird-table.

Application #930 for Cathleen & Joseph Mathey owning property at 268 West Lake Rd., PY to request an Area Variance to build a 2 story, 3 bay garage with storage and play area on the second floor.

Mr. Ian Wydra was present as Contractor/Representative for the Matheys. Mr. Wydra noted for the Zoning Board Members that this application had been reviewed by both the Yates County Planning Board and the Jerusalem Planning Board. Both boards had recommended disapproval of the use of the 2<sup>nd</sup> story portion of this building. Mr. Wydra stated that the applicants wish to modify their request and to change the use of the 2<sup>nd</sup> floor of the garage to storage only and to not have any interior plumbing.

The request is still for a 25 ft. high accessory structure. He noted, however, that there would be extensive excavation into the bank so that the second story area could be accessed from the ground level. There is to be minimal grade driveway coming from the road to the garage entrance.

An adjacent neighbor, Vince Voland, was present and had some concerns with regards to the placement of the building and if it could be moved back more so as not to block his view of the lake from his front deck.

The applicant will more than meet the required front yard setback of 65 ft. as the submitted drawing shows a 71 ft. setback from the edge of the road right-of-way. The question of the view could be a consideration based on the building height that is allowed by the Zoning Board if it is over what the ordinance allows for accessory buildings in the R1 zone. The neighbor could discuss this matter with the applicant. Mr. Voland stated that he would talk to the Matheys.

Another adjacent neighbor, from 269 West Lake Rd., asked about the boundary line and the distance of 15 ft. to the building, if this measurement is to be measured to the eaves of the roof or to the proposed building wall. Mr. Wydra noted that the 15 ft. measurement would be to the roof eaves. There was a question with regards to the dirt to be excavated and where it would go. It is to be removed from the site. The contractor stated that he would be using form-a-drain for the footer circumference, then bringing the drainage to daylight. Any hillside runoff would be coming out and going to the roadside ditches.

There were questions regarding the nearby stream that according to the neighbor runs quite a bit of water. There will be a five or six foot rise from the road and graded to come up to the front of the garage. The actual blacktop driveway will start about 20 to 25 ft. away from the neighbor's driveway.

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

Concerns for how the wall of the garage would be built were discussed and it was noted by the Contractor that he has an engineer that will be designing the retaining/support wall for the 1<sup>st</sup> floor of the garage.

A motion was made by G.Herbert, seconded by R.Rubin to deny the application as modified (noting that the use of the 2<sup>nd</sup> floor as a playroom/storage area with lavatory facilities has been withdrawn) due to the requested 25 ft. height being substantial. The motion was carried with a poll of the board as follows: J.Crevelling-deny, M.Steppe-deny, J.Bird-deny, R.Rubin-deny, and G.Herbert-deny.

A second motion was made by G.Herbert, seconded by J.Bird to grant the modified application (noting that the use of the 2<sup>nd</sup> floor playroom/storage area with lavatory facilities has been withdrawn) allowing for a maximum height of 20 ft. with the following conditions that Soil and Water Department would be involved with approving a plan regarding excavation of the site along with the proposed methods for preventing soil erosion and the excavated bank to be retained and maintained. In addition, an engineer design for the 1<sup>st</sup> floor supporting/retaining wall for the garage will be submitted to the CEO. These conditions shall be met prior to any excavation of the site and the issuing of a building permit.

The motion was carried with a poll of the board as follows: R.Rubin-grant the modified motion, J.Crevelling-grant, M.Steppe-grant, J.Bird-grant, G.Herbert-grant.

It was noted again that per the modification of the application there is to be no plumbing in or out of the building.

A water hydrant outside for garden hose hookup to wash cars is not a matter for consideration by the Zoning Board.

Board Members were in 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 the locality.

Application #931 for Mary Worboys Curtin owning property at 1205 East Bluff Dr. requesting an area variance to make a created non-conforming lot legal for purposes of building a boathouse on the lot portion between the road and the lake that has 73.54 ft. at the shoreline from point to point and 68 ft. wide as a straight tie line across the property.

Mr. Bernie Hough, contractor, Mr.Curtin, and Ms.Worboys-Curtin were present to answer questions for board members.

It was noted that this lot was at one time part of a larger parcel that had adequate frontage at the lakeshore. Adjacent neighbors to this property were present to voice their concerns and to ask questions as to the specifics of the boathouse plans.

The proposed boathouse, as explained by the contractor, would be 21 ft. 6 inches wide and 30 ft. in length with the building itself to be 10 ft. 10 in. high and with the deck railing adding another 3' in height.

Questions were asked as to when this particular lot was created to be less than the required 75 ft.

An adjacent neighbor, Mr. Hamlin, was present to state that he had purchased enough land from this piece of property to make the property that he bought along with the existing barn to be conforming by meeting the 10 ft. side yard setback. This purchase happened back in the mid-80's. There were two divisions of the land between the road (East Bluff Extension) and the lake, leaving the 73.54 piece along with 8 plus acres on above the extension road and East Bluff Dr.

Mr. Hamlin explained that after one or two deaths in the family, and the property being left to children, it was finally sold to a contractor/developer who subdivided the acres leaving the shore front with 1205 East Bluff Dr. Two log homes were built respectively and the third lot has yet to be built on.

It was also noted that the lake front is deeded to the parcel identified as 1205 East Bluff Dr. and the other lot, 1202 East Bluff is a separately deeded parcel although the two properties have been sold together to the last owner and the current owner.

Letters from two neighbors (copies on file) were distributed to board members. The adjacent property owner of 1201, Mr. Johnson, was present asking board members to give thorough review regarding the history of this property and previous requests that were denied for variances for similar structures in the past. Mr. Johnson's concern was not with the present owners, but perhaps future owners who might want to replace a boathouse with a single family dwelling. If the board once grants a variance for 2 or 3 ft. then it becomes a matter of granting a variance for 5 or 6 ft or more. Mr. Johnson stated that he believed the present owners bought this property knowing full well that this portion of their purchase was non-buildable. This will start a bad precedence that will affect the character of the neighborhood.

Chairman R.Rubin stated that the basis of this variance request is to improve a non-conforming lot that has frontage of less than 75 ft. and if the board elects to do this then they as a board must substantiate their decision whether it is for 3 ft. or 5 ft.

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

J.Bird had concerns about granting a variance for a created non-conforming lot, however, he stated that this is only a few inches.

There was further discussion about the actual size of this boathouse and it not being offensive to neighbors from the standpoint that it is not very high and would be built back into the bank area. There was additional discussion about putting conditions on what can be built on this lot in the future if this variance is approved.

Chairman R.Rubin made the statement that the board needed to get back to the question that the Zoning Board has control over which is the allowing of improvement on a non-conforming lot. Therefore the board needs to ask the question are we willing to grant permission for someone to improve a non-conforming lot under the zoning laws as they currently exist.

Board Member G.Herbert stated that he has issue with the fact that there are many, many lots which are pre-existing that have structures on them much greater than what is currently being asked for by this applicant. This request is for a boathouse and is not a dwelling.

A motion was made by R.Rubin and seconded by J.Crevelling to deny this request to make the lot conforming and legal because the width does not meet the 75 ft. minimum requirement per the zoning regulations.

The motion was not carried with a poll of the board as follows:J.Bird-disagree, M.Steppe-disagree, G.Herbert-disagree, R.Rubin-agree, J. Crevelling-agree.

Board Member G.Herbert then stated that he would like to have the Town attorney look at this application to give the board some legal advice about the kinds of conditions that could be placed, if this non-conforming lot is made legal. What kinds of conditions for future buildings would be legal and enforceable for this property based on a variance that was granted to make this non-conforming lot legal.

G.Herbert then made a motion to table this application until the June meeting to seek some legal counsel on this matter. The motion was seconded by M.Steppe and carried with a poll of the board as follows: R.Rubin-agree, J.Crevelling-agree, J.Bird-agree, M.Steppe-agree, G.Herbert-agree.

Chairman R.Rubin will contact the Town Attorney regarding this matter.

#### OTHER BUSINESS

Heidi Bauer, owner of property at 3509 Rte 54A, Branchport, NY, asked to speak to the Zoning Board about having two pigmy goats to take care of her back lawn area. Ms. Bauer's property is located in the R1 (Lake-Residential) zone. She made a call to the Code Enforcement Officer regarding the goats and was told she could not have them. Ms. Bauer stated that she would fence in her back yard area for the goats. She said that this would be cheaper than buying gasoline at \$4 per gallon to keep the lawn mowed. It was noted that the zoning ordinance is silent on what constitutes a pet that might be kept for this purpose. Ms.Bauer was told by someone that the ordinance mentions anything with cloven hooves would not be considered a pet.

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The Jerusalem Zoning Ordinance does make this differentiation. Chairman R.Rubin stated that the board has no precedence for dealing with this matter. Therefore the Zoning Board is making no recommendation one way or the other regarding this matter.

There being no further business for discussion, a motion was by R.Rubin and seconded by J.Crevelling to adjourn. The motion was carried unanimously (5-yes, 0-no) and the meeting was adjourned at 9:05 pm.

Respectfully submitted,  
Elaine Nesbit/Secretary