

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

October 8, 2009

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, October 9th, 2009 at 7 pm by Chairman Glenn Herbert.

Roll Call:	Glenn Herbert	Present
	Jim Bird	Present
	Jim Crevelling	Present
	Mike Steppe	Present
	Ed Seus	Present

Others present included: Attorney Alan Knauf, Pamela Brawdy, Harriet Polyzoos, Richard & June Becker, Jim & Denise Toomey, and Brian Zerges.

A motion was made by E.Seus and seconded by J.Crevelling to approve the September Zoning Board Minutes as amended. The motion was carried unanimously (5-yes, 0-no).

Amendment to read as follows: Page 2, Paragraph 5, Sentence 4 change the location from west to east.

COMMUNICATIONS: There were no written communications.

OLD BUSINESS:

Application #953 for Two Kids Trust of 2002, Doreen Inzalaco, Trustee, owning property at 638 East Bluff Dr. to request an Area Variance (Part A) for keeping a storage shed built by the previous owner without a permit and not having sufficient front yard setback from the high water mark. To request (Part B) an interpretation from the Zoning Board regarding the use of the beachhouse at the southern end of the beach front property for rental purposes.

This application was tabled from the September 2009 Zoning Board Meeting.

Chairman G.Herbert stated for the record that this application would be reviewed Part A and Part B as it was for the September meeting.

Attorney Alan Knauf was present representing Ms. Inzalaco, who had planned on attending this meeting, and had booked a flight to come from CA. however, her daughter developed the flu, and therefore, she cancelled. Attorney Knauf provided information for the Zoning Board with respect to (Part A) of Application #953 as to the location of the northern storage shed with respect to the high water mark.

Attorney Knauf had spoken with Richard Wilson, land surveyor, who had done a survey of this property for the former owner, Mr. Melrose.

Attorney Knauf told the board members that in his discussion with Mr. Wilson, that the tie line, as shown on the survey map and per Mr. Wilson, is the high-water mark. This tie-line along high-water is indicated on Mr. Wilson's survey map by a broken dotted line.

The survey shows a retaining wall that is lake-ward of the high water mark, however, it stops just past the northern structure and then it becomes just shoreline. It was noted, by board members, that even with the retaining wall, should there be a lot of rain, the water could come in over some of the area just by coming in by the side of where the retaining wall stops.

Attorney Knauf presented a copy of the survey map for the record (copy attached to application) and had indicated that the approximate setbacks of the northern structure are a negative 3.9 ft. to the high-water mark at its closest point, and 5.7 ft. at its farthest point. It is 2.7 ft. to the retaining wall at the closest point, and 4.4 ft. to the retaining wall at its farthest point.

Board members discussed whether or not they actually then have jurisdiction to even consider an area variance since the building is totally lake-ward of the high water mark. It was noted that most deeds have wording in them which quit claims the area between high and low water mark. The Zoning Board has jurisdiction between the high and low water mark along with the State of New York. It was also noted that the dock and mooring regulations are also in effect past the high-water mark.

It was noted by one board member that a discussion of allowing or not allowing an area variance for this structure seemed to be beyond the point, since the building itself is illegal and was never permitted in the first place. Not built by this owner, but by the prior owner. It was also noted from the previous month's meeting that an application for an illegal use of this building had been denied, as well as the denial of an area variance to keep the illegal building with its present location and built higher than zoning allows.

The area variance test questions were read 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).

Based on the fact that the building was built without a permit by the prior owner and the fact that the building lies completely lake-ward of the high-water mark, a motion was made by J.Bird and seconded by E.Seus to deny the variance as requested. The motion was carried with a poll of the board as follows: M.Steppe-deny, G.Herbert-deny, J.Crevelling-deny, J.Bird-deny, E.Seus-deny.

Part B of this application was to request an interpretation of the zoning with regards to using this building for rental purposes.

Attorney Knauf provided the board with a deposition signed by Brian Zerges (copy on file) that gave the approximate time that he moved to the area and started his own business, then known as "Rental Plus". A notarized deposition signed by Larry Melrose (copy on file) former owner of this property, was provided to the board by Attorney Knauf. This statement indicated that Mr. Melrose owned and rented this property out including the small "guest house" at the south end of the beach.

Attorney Knauf submitted for the record some court cases regarding abandonment of a use and non-conforming uses (copy on file).

Chairman G. Herbert stated that the board members still needed to see some type of proof that this use had, in fact, been in existence prior to 1993.

An adjacent neighbor to the north, Harriet Polyzoos, asked to address the board, and she stated that right after the September meeting, she had spoken by telephone to Mr. Larry Cooke, the owner prior to Mr. Melrose, who stated that the property had never been rented out until after 1995. Mrs. Polyzoos has known the Cooke family for many, many years. She stated, as indicated earlier, that the Cooke sons, would sleep in the little "guest house" when they were home from college. Mrs. Polyzoos stated that she had Mr. Cooke's telephone number, should anyone wish to call him and verify this information. Attorney Knauf was given the telephone number.

Other interested neighbors were in agreement with the statements made by Mrs. Polyzoos regarding the information shared from Mr. Cooke.

Chairman G. Herbert stated that another matter of interest with regards to this building needed to be considered. The original cottage, which has since been torn down, was attached to this now remaining "guesthouse". This, in effect, made the whole structure, as though it were the principal dwelling/building. After the main part of this structure/cottage was removed, the only part that was left was this small building and a small portion of the deck. This then, was the creation of an accessory structure, since the new, replacement home had already been built at the top of the bank near the road. By leaving this building at the south end of the beach area, as now an accessory structure, the zoning rules apply as though it had just been built at the time of the main cottage removal. Since the removal of the main cottage was completed in 2005/2006, the zoning regulations that apply to accessory structures as adopted in 1993 would apply, that is, no accessory structure shall be used for living or sleeping purposes, or operated for gain, per Article VI, Section 160-29 (B).

G.Herbert stated that he would make the following motion, which was seconded by J.Bird, regarding the interpretation of the building at the southern end of the beach; that it is not to be used for purposes of living, or sleeping, or operated for gain, based on #1) there being no proof that this building was rented prior to 1993; and #2) the original structure/cottage to which this building was attached by a deck/walkway, was torn down, which in effect, makes the use of this building new, as an “accessory” structure and the zoning regulations for accessory structures that were in effect prior to 2005/2006 apply. The motion was carried with a poll of the board as follows: M.Steppe-agree, J.Crevelling-agree, E.Seus-agree, J.Bird-agree, G.Herbert-agree.

Other Business:

Chairman G.Herbert asked board members if they were in agreement with him that when there are occasions to question where the high-water mark is on lake properties, that they, the zoning board, would go by the retaining wall where there is one. All board members were not in agreement with this and the question was raised as to what constitutes a retaining wall and how far does it have to extend along the shoreline to be adequate.

There was general discussion about this matter and about flood zones, etc. It was decided that as in the case of Part A of Application #953, that the surveyor establishes the high-water mark on the survey. The question was asked, what if there is no survey, and it was noted that in most cases, a survey would need to be provided to the Code Enforcement Officer, in order to establish whether an area variance might or might not be needed. The consensus of board members was to use a survey map or require a certification from a licensed surveyor, since they deal with this issue and their stamp goes on the paperwork.

There being no further business, a motion was made by J.Bird and seconded by J.Crevelling to adjourn the meeting. Motion carried unanimously (5-yes, 0-no). Meeting adjourned at 9:15 pm.

Respectfully submitted,
Elaine Nesbit/Secretary