

Approved  
As Amended

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

September 11, 2009

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, September 10, 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
Alternate	Jack Hoffer	Present

Others present included: Attorney Alan Knauf, Bob Wetherbee, Richard & June Becker, Joyce Netski-DeMello, R.F. DeMello, Jim & Denise Toomey, Beverly Gustin, Harriet Polyzoos, Pamela Brawdy, and Brian Zerges.

COMMUNICATIONS: There were no communications.

NEW BUSINESS:

Application #953 for Doreen Inzalaco as Two Kids Trust of 2002 owning property at 638 East Bluff Dr. to request an area variance (Part A) to keep an existing building, which was built by the former property owner without a building permit, downsize it to 15 ft. in height, to be used only for storage, but needing an area variance for having less than 15 ft. from the high water mark (front yard setback). The second request (Part B) to request an interpretation of the grand-fathered "guest house" and whether or not it can be rented.

Attorney Alan J. Knauf was present to represent Ms. Inzalaco of "Two Kids Trust of 2002" and to answer questions for board members.

Attorney Knauf gave a brief review of the history of this property stating that he was not the attorney for the present owner Ms. Inzalaco at the time of her purchase of this property. Attorney Knauf was aware of the previous application for a Use Variance and an Area Variance, both of which were denied by the Zoning Board of Appeals November 13<sup>th</sup>, 2008.

Attorney Knauf stated that he had discussed this matter with the Town Attorney, Philip Bailey. Attorney Bailey had ruled that this application should be accepted and the Zoning Board should determine if the current application is different from the prior application.

A letter from Attorney Alan Knauf to the Zoning Board of Appeals dated August 6, 2009 summarizes this information, as well as the issues, as he has determined them to be with regards to this application. A copy of this letter is on file with the application.

Chairman G. Herbert stated that he would like to deal with this application as Part A and Part B, as applied for. Part A being the request for an area variance to keep the shed at the north end of the beach in its present location.

Attorney Knauf stated that the building would have the second story removed to bring the height of the building into compliance. This building, having been built sometime around 2001 by the previous owner, was built without a building permit. The building would be used only for storage of beach and boating equipment. The property owner wished to keep the building in its present location due to the aesthetics and if moved back from the high water mark would result in disturbance of the bank. Applicant wished not to have to dig into the bank, which could result in erosion issues.

Chairman G. Herbert asked what line on the submitted survey map indicates the high water mark. There was also a question as to whether the high water mark follows the retaining wall. No distance was given as to the location of the building to the high water mark. The Chairman suggested that without these pieces of information the board would not be able to make a decision. It was suggested that Part A be tabled until these issues are determined.

The review of Part B, involved the use of the “guest house” and whether it is a principal dwelling or an accessory structure. Another issue was whether this structure was rented prior to 1993 and proof of its being rented needs to be obtained. There was also discussion about this building being attached to the original cottage by a deck. When the cottage was removed after Mr. Melrose (former owner) built the new home on the **\*west** (\*See 10/8/09 minutes)

side of East Bluff Dr. did this remaining building become an accessory building, since code does not allow two principal dwellings on one lot. As an accessory building, its purpose is incidental to that of the primary structure, however, its use for rental purposes needs to be proven by consistent rental receipts, tax receipts, etc. Zoning states that failure to exercise any nonconforming use for a period of one year or more shall terminate such nonconforming use of the structure or premises (See Article XIII, Section 160-57 §A).

Brian Zerges, owner of Rental Plus, the agency that currently lists this place as a rental property, was present and stated that he was very familiar with this property and had actually stayed there when he (Brian) came back to this area in the early 90’s. Mr. Zerges stated that he was 80 % sure that this property had been rented when owned by Mr. Cook.

Mr. Melrose may or may not have rented this property and Mr. Zerges wasn't 100% sure whether or not his agency had been involved in the rental of this property under the Melrose ownership.

Attorney Knauf stated that he felt his client did not need to apply for the use variance (which was applied for and denied) because the use was grandfathered. He stated that his position as attorney for his client was to ask for an interpretation, not regarding the use of the structure but whether it can be operated for gain.

A question was asked of Attorney Knauf how much time the owner spends at this property. The Attorney's reply was that they own property on the other side of the lake and hardly stay at this property at all.

Chairman G. Herbert asked what is the intention of the applicant if this interpretation goes in their favor. Attorney Knauf stated that it would be rented, but as part of the house. B. Wetherbee, who manages properties such as these, stated that this would be considered as overflow. The main house is full so this building may get used as a place for the rest of the family to sleep.

It was agreed that there were still unanswered questions regarding this matter. There is a lack of information regarding the actual renting of this property. More information is needed regarding the legalities of the "guest house"/ beach house.

A motion was made by J. Bird and seconded by G. Herbert to table application #953 until the October 8<sup>th</sup> meeting to give the applicant time to provide the following information:

- 1) A survey that shows the location of the high water mark to determine the distance from the north building on the beach to the high water mark for variance purposes.
- 2) Rental history, proof of rental, as much as can be provided to show consistent renting of the southern building.

The motion was carried unanimously (yes-5, 0-no).

Chairman G. Herbert recognized that there were adjacent property owners present who wished to speak to the Zoning Board of their concerns regarding this application.

The owner of 641 East Bluff Dr. raised the issue as to whether the Melrose family had made an agreement that after they built their new home and removed the old cottage, what would be the use of the little building that was left at the southern end of the beach area.

Chairman G. Herbert stated that the ZAP Secretary could take a look at the building permit that was issued for the property at 638 East Bluff Dr. when the new home was to be built. Any information found would be provided at the October Zoning Board Meeting

Mr. Zerges spoke to these issue as owner of the rental agency that rents this property. He stated that his company had rented this property at different times, and that there had been renters of this property whose actions were unacceptable. He stated that the neighbors could contact him personally at any time if there were issues going on when this property is being rented.

The owners of 639 East Bluff live there from May until October. They are concerned that the renters of 638 East Bluff Dr. usually have 8 to 10 cars with a lot of traffic in and out. If the "guest" building is allowed to be used for rental purposes, will there be more cars?

The owner of 642 East Bluff questioned why there was even any consideration for the building at the north end of the beach to be allowed to remain since it was built by the previous owner without ever even getting a building permit.

The owner of 628 East Bluff Dr. was in agreement about the north building being removed even though the current owner did not know that the previous owner had built it without a permit.

The neighbors were all in agreement that this property seems more like a motel instead of a single family residence that is being rented.

There being no further business, a motion was made by J.Crevelling and seconded by M.Steppe to adjourn. The motion was carried unanimously (yes-5, no-0)and the meeting adjourned at 8:30 pm.

Respectfully submitted,

Elaine Nesbit/Secretary