

Approved

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

June 14th 2012

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, June 14th 2012 at 7 pm by Chairman Glenn Herbert.

Roll Call:	Glenn Herbert	Present
	Jim Crevelling	Present
	Ed Seus	Present
	Dwight Simpson	Present
	Jim Bird	Present
Alternate	Earl Makatura	Present
	Rodgers Williams	Excused

Others present included: CEO John F. Phillips, Bill Sutherland, Delores Sutherland, Jennifer Dougherty/Phillips, Lytle LLP, Vaughn & Phoebe Baker, Donald & Diana Schneider, Steve McMichael, Fred Thomas, Douglas Stimmerman, Mr. & Mrs. Camerson, Gerald Kernahan and other interested citizens.

A motion was made by J.Bird and seconded by J.Crevelling to approve the May Zoning Board minutes as written. The motion was carried unanimously (6-yes, 0-no).

COMMUNICATIONS:

A letter of communication from an interested adjacent neighbor in support of Application #1003 was copied to Board members (copy on file with application).

A letter from Attorney Firm, Phillips, Lytle LLP in response to Application #1004 was copied to Board Members and a copy given to the Applicant of #1004 (copy on file with application).

AREA VARIANCE/SPECIAL USE/INTERPRETATION REVIEW:

Chairman Glenn Herbert stated that he wanted to reverse the order of the applications to be reviewed and to take New Business Application #1004 first, ahead of Old Business and tabled Application #1003.

He stated that as far as the Zoning Board is concerned, the criteria for the Special Use Permit has been met and that the only thing remaining for the Board of Appeals to do is to review the Condo

Requirements (copy on file with application) that are going to be part of the obligations, responsibilities, covenants, and restrictions of the people living in the individual units adding other restrictions that the board feels should be necessary as a condition of the special use.

Chairman G. Herbert complimented the Attorney firm on how well written were the condo association restrictions, covenants, responsibilities, & obligations.

Mr. Schneider asked the question that if the board was to make a ruling on the lot coverage issue and the interpretation of the 10% coverage and depending on the board's ruling, could it change the scope of the project? Chairman G. Herbert stated that was a fair statement and it was a possibility.

Chairman G. Herbert stated that the board would move to review Application #1004 first making a brief comment for the board that in dealing with any of the other districts the board has not had to deal with the issue because lot coverage is lot coverage and it includes all of the buildings/structures as a total number when it comes to calculating lot coverage. He stated that in the Ag-Res. Zone the way in which this particular law is written makes it controversial because it calls for single building coverage not plural and while he believes that the writers of the code may have intended for the law to include all the buildings he did not feel that this is what the law actually says.

Application #1004 for Donald Schneider requesting an Interpretation of the Zoning Code, Article V, Section 120-21, "C" ; Maximum Building Coverage to Lot. No building or structure shall occupy more than 10% of the area of the lot.

Mr. Schneider had presented a written document (copy on file with application) that had accompanied his requested application for interpretation giving the reasons as to why he felt that the Code Enforcement Office had not correctly interpreted the Code with regards to Lot coverage for Article V, Section 120-21 "C".

Mr. Schneider was present to give further comments to the board as to why he believes this interpretation is in error.

Mr. Schneider noted that when the code uses the singular number it shall include the plural and the plural the singular; (referencing Article II, Section 160-4).

He read from New York juris prudence one of the first books of McKinney regarding matters of law in regards to Zoning which looks to the intent of the writers of the Code and what their intent was when they wrote the law. He noted that the intent of the law will control over the precise language of the law to avoid an absurd rendering of the law.

Mr. Schneider then pointed out that if you simply apply the plural to Article II, Section 160-4, then it would read no buildings or structures shall occupy more than 10% of the area of a lot under the maximum building coverage to area of lot.

He then points out that if the board rejects this interpretation, then the board needs to take a look at what can happen if the interpretation is taken literally. A literal interpretation of this section of the code by the board could result in a lot having extensive building coverage of up to 87% which is not possibly what the writers of this code could possibly have intended.

Board Member J.Bird had reviewed the language in the other zoning districts as well as the Ag-Res. Zone and noted that in each district it talks about a certain percentage of coverage to the area of the lot. He referenced the definition of coverage from the code – that percentage of the plot or lot area covered by the building or structures, including accessory buildings and structures. In his opinion he thinks the intent of the code was to have the coverage of the lot be limited to a certain amount of square footage. In this case then the 10% would apply and would include all of the structures and buildings on the lot and would include any accessory structures as part of the lot coverage even though in the case of Art. V 160-21 “C”, it is not written that way.

Board member E. Seus stated that it may have been the intent of the writers to have the code interpreted the way Mr. Schneider has explained the law, but this goes back to the early writing of the code. In many of the other zoning districts the wording has been changed, after having situations come up and seeing that the early writing of the code may have been too loose and needed to be re-written to say exactly what the writers of the code intended to say.

Board member J.Crevelling stated that he had read and re-read the law and then went to definitions and he first looked at the definition of lot: a parcel of land occupied or capable of being occupied by one building and the accessory buildings or uses customarily incident to it. The significant word in this definition is one, and then there is an exception in the Ag-Res. Zone for Multiple Dwellings.

He then looked up the word multiple dwelling: a building containing more than one dwelling unit.

He then looked at building: any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattels.

The next definition was principle building: a building in which is conducted the main or principal use of the lot on which said building is situated.

In any residential district, any dwelling shall be deemed to be the “principal building” on the use on which the same is located. In the case of this application, is there one building or several buildings? One structure or several structures? Are we talking about several or multiple dwelling units? While it seems simple to say that the 10% rule should apply, the multiple dwelling is an exception to the rule in the Ag-Res zone so how does one apply the 10% maximum lot coverage rule? J.Crevelling stated that he had inquired as to how many other multiple dwelling developments there are in the Town and there are at least two others. The lot coverage issue was not a matter that was raised before the board in either one of the other two developments. J.Crevelling stated that he feels the code regarding lot coverage for the Ag-Res zone is outdated. He questioned what the actual lot coverage of the present application is as calculated at 10% of the total area of the lot with all structures and buildings. The answer from the applicant for the total lot coverage for application #1003 is 10.6%. and this is for 15 buildings.

It was also noted that in the definitions for area building, that where it is not otherwise defined, that it is the total of areas taken on a horizontal plane at the main grade level of the principal building, exclusive of all accessory buildings and exclusive of uncovered porches, terraces, and steps.

Applicant’s Legal Counsel, Jennifer Dougherty, spoke on behalf of her clients, having submitted copies of a document for the Zoning Board Members (copy on file) which was a rebuttal to application #1004 and Mr. Schneider’s letter supporting the 10% maximum lot coverage for all buildings and structures for the Central Ave. Senior Living Project.

Ms. Dougherty stated that while she could appreciate the Zoning Board’s concern for correct interpretation of the law and to not have excessive lot coverage, it is important that the Board consider the fact that there is another section of the code in the B1 District which is almost identical language in Section 160-36(D) which states: No building or structure shall occupy more than 20% of the area of its lot.

She points out that in Mr. Schneider’s appeal, he asks the ZBA to add new meaning into the Code and to insert words and phrases that are simply not found in §160-21(C) . She points out that in other sections of the Code the words “cumulatively” and/or “in combination” have been inserted to make clear what is to be calculated in the total lot coverage for these other zone districts.

When asked by Chairman G. Herbert if he had anything to add, Board Member D. Simpson stated that he was reading and reviewing the comments that had been copied to the board.

Chairman G. Herbert stated that irregardless of what the Code says, this board has to take that for what it is. He stated that he is quite certain that Board would not want to see 50 or 60 units on a 5 acre parcel, and he is positive that was not the intent of the writers of the code. While his feelings say that the 10% maximum coverage for all buildings should be implemented, his own personal interpretation would allow the applicant to go over the 10% lot coverage.

Board Member J. Bird stated that if the Board determines to go with the 10% rule for maximum building coverage to area of lot to include all buildings then the applicant would only need to apply for an area variance for the .6% overage of lot coverage.

Chairman G. Herbert stated that his feeling is that the applicant has done a good job and the proposed project is not overcrowded, has met all other aspects of the code for this area and is well planned out.

Don Schneider then stated that the original Code was drafted by very intelligent men who did not have any Land Use or Zoning background. They did not want any professional help but took parts of zoning code from other Towns reviewed it and put it all together themselves to come up with the Jerusalem Zoning Code as it was first written. For Ms. Dougherty to attribute the fact that they intended something different for the other zone districts according to the Code as it is written now is simply not accurate.

He noted that Board Member J. Bird's review of the Code with regards to coverage is an important point and is critical to all of the districts. Maximum building coverage to area of lot. The next sentence then is dealing with the singular to plural building(s) or structure(s) in accordance with Article II, Sec. 160-4. The zoning board needs to interpret the code regarding the maximum buildings covering this project at 10% and if an area variance is needed then the applicant needs to apply for an area variance. In his opinion, the only logical interpretation is the 10% limit on building(s).

Ms. Dougherty then stated that the Zoning Board needs to look at the code regarding the maximum building coverage to area of lot as it is written and if there is a problem with the way it is written then it needs to be addressed by an amendment to the code, not by a happen stance or by an interpretation.

Mr. Sutherland, asked why the Town Attorney was not present at this meeting. Chairman G. Herbert stated that he did not know.

Chairman G. Herbert had asked the Town Attorney for his opinion on the Code. He received an email from Attorney Bailey which said pretty much that the Zoning Board of Appeals can make an interpretation of the code on their own with regards to how the wording applies.

Chairman G. Herbert stated that the Zoning Board will look at this issue and make a decision, but at the same time, whatever the decision, make a recommendation to the Town Board that the Code be changed in the Ag-Residential Zone to include 10% total lot coverage of all buildings or structures.

The Comprehensive Plan Future Land Use promotes the multiple dwelling types of development in both the R1 and Ag-Res zones.

It was so noted that as this review process gets under way, that for lot coverage of multiple dwellings, central water and central sewer whether public or private can have a big impact on the density issue and lot coverage. If public water and public sewer are not available in an area where a multiple dwelling development might occur and the central water and central sewer are private then the development area could be more greatly impacted since much of the space required would be used up for this private centralized infrastructure. Therefore, the lot coverage issue may change based on the type of available infrastructure.

Board Members asked CEO John F. Phillips if he had any comment. He stated that he was not changing how he looks at this portion of the code. He is in agreement that the code needs to be looked at and reviewed. In this particular case, the applicant for the Senior Living Development has done everything that has been required of them according to the Code so far. The Code Officer stated that he interpreted the code the way that he did and he stands by it.

Ms. Dougherty stated that in her opinion that by the CEO sending the application for the Senior Living Development through to the Zoning Board without making a determination that an area variance was needed, was an indication that in his review, the 10% building coverage was not an issue.

The board members struggled with the wording of the motion for interpretation of the code. regarding Article V., Section 160-21 "C" Maximum building coverage to area of lot. No building or structure shall occupy more than 10% of the area of a lot. After much discussion, J. Bird made a motion seconded by D.Simpson that Article V. Section 160-21 (C) shall mean that 10% of the lot coverage includes all structures and buildings.

The motion was defeated by a poll of the board as follows: J.Crevelling-decline, E. Makatura-decline, E.Seus-decline, G.Herbert-decline, D.Simpson-decline, J.Bird-decline.

Application #1003 for Steve McMichael for property on the West Side of Central Avenue requesting a Special Use Permit for Multiple Dwelling Development for Senior Living at this location which is in the Ag-Residential Zone.

It was noted by Chairman G. Herbert that the board had received and reviewed the Obligations, Responsibilities, covenants, and responsibilities that would be the subject to all the Unit Owners, Tenants and Occupants. There was a general discussion by the board of this list. Chairman G. Herbert stated that it was a list very much like one he had dealt with in Florida.

The board talked about adding the restriction of having no above ground pools. No outdoor storage of boats or RVs was discussed which is already a restriction within the list of covenants, unless consented to by the Board of Managers. The discussion of who makes up the Board of Managers came up and it was noted that eventually it is the owners of the living units themselves and as they police themselves and want to keep up their homes and their grounds to a high standard it will take a majority vote to change any of the rules.

It was noted by Ms. Dougherty that these By-Laws and the Rules and Regulations have to be filed with the New York State Attorney General's Office in Albany. If changes are made by the Homeowner's Association, then an amendment would have to be approved and filed with the Albany Office.

A review of the letters from neighbors was discussed. Previous letters that had come in, some were in support of the project, another letter that came in had concerns about the storm water run-off. This concern has been partially addressed by the preliminary site plan. The concern will be further addressed by the storm-water pollution and prevention plan that will be reviewed by Yates County Soil and Water Dept. and the Engineers for this project will be working with Soil and Water to implement the Final Site plan for this site.

A neighbor living directly across the road from this project had concerns that as the cars would come out the new proposed driveway the lights would shine directly across the road right towards his house. The applicants of the project stated that they would take that into consideration and would do whatever they could to see if they could make sure that would not be a problem for him.

It was noted that the Jerusalem Planning Board had reviewed the SEQR for this project and based on the materials submitted had determined that there would be no significant physical or environmental impact and therefore a negative declaration was made.

Other conditions of neighbor concerns was regarding directional downward lighting, and how high would the lights be, the answer was probably about 12 ft. high. This was also one of the Planning Board's conditions which was reviewed at their meeting including: Buffering, erosion control, density of the project, side yard setbacks, screening, low lighting, and property lines. These items will be addressed and finalized at the time of final site plan review at a later date.

G.Herbert made a motion seconded by J.Bird to approve the Special Use Permit for Application #1003 with the restrictions that the Zoning Board has added should coincide with the document of Condominium Restrictive Covenants as drawn up by Phillips Lytle LLP for this Project, The Senior Living Development on Central Ave. to include no above ground pools.

In addition the Architectural design should reflect the rural character of the Town of Jerusalem.

Building and roof colors should consist of natural earth tones, white, black or shades of gray. Primary colors or bright colors shall be limited to trim and signage. Day glow or neon colors shall be avoided. Color schemes shall blend in with surroundings.

Glare from reflective surfaces should be minimized or such surfaces sited so glare is not visible from the road corridor.

Appropriate screening shall be provided to obscure as much as reasonably possible all roof mounted equipment, roof vents, or other unsightly building appurtenances from view from the road corridor.

Buffer plantings will be established and maintained on the western edge of the development so as to minimize the view of the development from Rte. 54A while not further restricting the view of the lake from Rte. 54A.

J. Bird noted that the applicants that are applying for this special use permit are all local residents that live here and have businesses here. He thinks that the project has had a lot of thought put into it and it has been designed well and believes that the document of Condominium Restrictive Covenants is a good document that will be a means of helping to keep the property a well maintained place.

The motion was carried with a poll of the board as follows: E.Seus-grant, J.Crevelling-grant, E.Makatura-grant, D.Simpson-grant, J.Bird-grant, G.Herbert-grant.

OTHER BUSINESS

There was a general discussion among board members regarding education and training. It was noted that board members aren't always familiar with their own Code and perhaps time needs to be spent reviewing our own Code and becoming more familiar with situations where the code might be applied and applications where it cannot be applied. This time spent in review could be applied toward hrs. of required education and training if the Town Board were to approve it.

It was also noted, that Chairman G.Herbert would be drafting a letter to the Town Board, on behalf of the Zoning Board, making a recommendation that Article V. , Section 160-21 "C" needs to be reviewed and changed regarding percent lot coverage.

There being no further business, a motion was made by D.Simpson seconded by J.Bird to adjourn the meeting. Motion was carried unanimously (6-yes , 0-no). Meeting was adjourned at 9:15 pm.

Respectfully submitted,
Elaine Nesbit/Secretary