

Approved

Town of Jerusalem  
Zoning Board of Appeals

November 10, 2016

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, November 10<sup>th</sup>, 2016 at 7 pm by Chairman Glenn Herbert.

Chairman G.Herbert asked all present to stand for the Pledge to the Flag.

|            |                  |         |
|------------|------------------|---------|
| Roll Call: | Glenn Herbert    | Present |
|            | Ed Seus          | Present |
|            | Earl Makatura    | Present |
|            | Rodgers Williams | Present |
|            | Joe Chiaverini   | Present |
| Alternate  | Kerry Hanley     | Present |
| Alternate  | Ken Smith        | Present |

Others present included: Stephen and Denise Simshauser, Attorney Don Schneider, Tim Cutler/Planning Bd., Ken and Jill Lerch.

A motion was made by E.Seus and R.Williams to approve the October Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS:

Decisions from the Yates County Planning Board for Site Plan and Special Use Application #1080 (copies on file with application).

Jerusalem Planning Board Decision for Site Plan and SEQR Determination for Application #1080 (copy on file with application).

Letter from neighbor & adjacent property owner, Tim McMichaels, regarding Application #1080 (copy on file with application).

Letter from neighbor, Tim McMichaels, with signed petition from residents of the adjacent duplex housing units regarding Application #1080 (copy on file with application).

AREA VARIANCE/SPECIAL USE REVIEW:

Application #1080 for Special Use application for Stephen and Denise Simshauser property at 3103 Skyline Dr., Penn Yan, NY 14527 also known as 'Skyline Trading Post'. This application is for an interior phase update to include the removal of some grocery items, installing a new bar, expand the seating from 57 to 80 seats per CEO, to add two additional television sets, and to apply for a license from the NYS Liquor Authority to serve liquor in addition to their already existing wine and beer license. They will continue to sell grocery items such as eggs, milk, and bread. There will be no live music.

There was a proposal to increase the hours of business from 6 am to 11:30 pm but this has since changed and the business hours will remain as they have been from 6 am to 10 pm.

Mr. & Mrs. Simshauser were present to answer questions for board members.

The Simshausers stated that their main reason for the interior phase upgrade was due to the fact that they were looking for a way to increase the revenue for their facility, mainly during the winter months. It is always this time of the year when things slow down and a lot of the summer folks are gone for the season.

Attorney Don Schneider was present to represent the adjacent neighbor, Mr. McMichael.

Chairman G.Herbert reviewed the Special Use application, phase update with the Simshausers which were basically all interior changes to their business. Mrs. Simshauser stated that the main reason for the changes are to generate some additional business.

It is their expectation that by installing a new bar, after removing some of the grocery items and adding two television sets, expanding the seating from 57 to 80 seats and applying for a liquor license from the NYS Liquor Authority to add to existing beer and wine license, that it might help to increase the dinner traffic. They will continue to sell milk, eggs, and bread, there will be no live music, and the hours of operation will remain from 6 am to 10 pm.

The letter from Mr. McMichael, neighbor and owner of the adjacent property, along with the petition with 8 signatures from residents of the adjacent duplex housing complex, had concerns about noise coming from the Trading Post due to the original proposed hours of increased operation and folks coming out on the deck at late hours making noise. There were additional concerns regarding the fact that someone could leave the Trading Post facility and wander over to the duplex units located next door. There was a suggestion that a stockade fence or a solid row of evergreens be placed 5 ft. back from the property line as a visual screen between the Trading Post and the duplex units.

The hours of operation at the Skyline Trading Post will not change and will remain as they were from 6 am to 10 pm.

Regarding the suggestion of a stockade fence or the planting of trees or bushes, the Simshausers stated that there were already some existing trees and bushes on Mr. McMichael's property although not a solid row. They also noted that they do not want to have any problems with their neighbors particularly the residents living in the duplexes since most of them are patrons of the Skyline Trading Post.

Chairman G.Herbert stated that there is another restaurant in the area that is in a more densely populated residential area and he has not heard of any complaints of anyone going from the restaurant to people's houses. In his opinion he felt that it was okay to leave things as they are. E.Seus asked if the expense of the trees or bushes was the reason for not putting something up, and the Simshausers stated that it was part of the reason. One board member concurred that if anyone really wanted to go over to the duplex area they could simply walk around any trees, bushes or fence that might get put up.

Regarding the visual screening part, G.Herbert noted that at least two of the duplexes are facing each other and have their backs towards the Trading Post and shield the other two duplexes from seeing much over there.

Attorney Schneider asked if there was going to be any wording in the phase update with regards to the screening issue and Chairman Herbert stated that he did not feel it was an issue unless the other board members had concerns. If there is a complaint, then it can be dealt with then.

It was noted, that since the Skyline Trading Post has been in operation, approximately ten plus years, they have operated a very successful business, and the Town has never received any complaints about it.

The Jerusalem Planning Board had reviewed the SEQR for this application for both the Site Plan and the Special Use Permit Phase update at their meeting in October, determining that there would be no significant adverse environmental impacts from these actions. The Site Plan review was also approved. (copies of both on file with application).

The Yates County Planning Board approved both the Site Plan and the Special Use applications at their meeting in October. (Copies with application).

A question came up from Attorney Schneider regarding the lighting and it being downward. Chairman T.Cutler of the Planning Board was present and he stated that the planning board had talked about the current light structures that are existing now at the Skyline Trading Post and board members felt that the current lights were adequate. The Simshausers stated that they have no plans to change any of the lights as they exist now.

There being no further discussion, a motion was made by G.Herbert seconded by E.Makatura to approve the Special Use application for the interior phase upgrade keeping the hours to be open for business as they are from 6 am to 10 pm. The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E.Seus-grant, R.Williams-grant, E.Makatura-grant, G.Herbert-grant.

Application #1081 for Kenneth Lerch for property at 1148 Esperanza Dr. Keuka Park, NY requesting an Area Variance to remove existing boathouse and replace with slightly larger one expanding it towards the north and west and the current boathouse is 9.1 ft. from the high-water mark at its closest point and with the new boathouse it will be 6.2 ft. from the high-water mark at its closest point which is due to the curving of the shoreline at this location.

Board members had been to the site and Mr. & Mrs. Lerch were present to answer questions for board members and explain why they were requesting the area variance. Mr. Lerch stated that one of the main reasons for requesting the area variance was so they did not have to disturb the steep bank east of where the boat house would be built. They would also like to utilize the upper area as more storage room while keeping the building within the requirement for accessory structures.

There were concerns by a couple of board members about the expansion of a building on a pre-existing, non-conforming lot. G.Herbert stated that this is a boathouse and its use is primarily that, which is for boat storage down by the water. J.Chiaverini stated that he would much rather see an area variance of a foot given rather than disturbing the steep bank behind the boathouse in order to meet the setback.

The area variance test questions were read and reviewed with the following results:

1.Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance: (5-no, 0-yes).

2.Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (3-no, 2-yes). G.Herbert-no, R.Williams-no, E.Makatura-yes, E.Seus-yes, J.Chiaverini-yes.

3.Whether the requested area variance is substantial: (3-yes, 2-no). G.Herbert-no, R.Williams-no, E.Makatura-yes, E.Seus-yes, J.Chiaverini-yes.

4.Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (5-no, 0-yes).

5.Whether the alleged difficulty was self-created: (5-yes, 0-no).

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

There being no further discussion, a motion was made by G.Herbert and seconded by R.Williams to grant the area variance application as applied for. The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E.Makatura-deny, E.Seus-deny, R.Williams-grant, G.Herbert-grant.

#### OTHER BUSINESS:

Board members had a brief review of two properties owned by different individuals on Crescent Beach that would like to go through the division of property process but need to obtain an area variance as both properties are pre-existing, non-conforming with one parcel being much small than the other and it would be very beneficial to gain a little bit more land. Zoning Board Secretary will notify property owners to make a formal application to come before the Zoning Board to request an area variance.

There being no further business, a motion was made by E.Makatura and seconded by G.Herbert to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned.

Respectfully submitted,  
Elaine Nesbit/Secretary

