

Approved

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

March 10, 2016

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, March 10<sup>th</sup>, 2016 by Co-Vice-Chairman, Dwight Simpson at 7 pm.

|            |                  |         |
|------------|------------------|---------|
| Roll Call: | Glenn Herbert    | Excused |
|            | Dwight Simpson   | Present |
|            | Ed Seus          | Present |
|            | Rodgers Williams | Present |
|            | Earl Makatura    | Present |
| Alternate  | Joe Chiaverini   | Present |
| Alternate  | Kerry Hanley     | Excused |

Others present included: Rick & Pam Kemp, Bill Bader, Faheem & Laurie Masood, Bill Grove, Rick Willson, and Tim Cutler/Planning Board.

A motion was made by E. Seus and seconded by D. Simpson to approve the February Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS:

Yates County Planning Board sent letters of approval for Application number 1065 and number Application number 1067. These approvals were given by default due to the fact that the Yates County Planning Board did not have a quorum for their February meeting.

AREA VARIANCE/SPECIAL USE REVIEW:

Application #1063 for Richard Willson for property at 2447 State Rte 54a requesting an area variance to allow for this lot to be divided having less road frontage at the front building line than zoning requires for a lot in the General Business Zone. This application was tabled from the February meeting to give the applicant time to re-draw the survey to include additional land making the lot an acre in order that only one area variance would be needed for lot frontage. The additional land making up the acre is located in the wetlands area and while not necessarily useful to the leasee of the property, it does make the lot conforming.

Mr. Willson was present to answer questions for board members. He noted for the board members that while the lot did look strange he had done as was asked about making the lot conforming. It was also noted that he and his heirs had an easement over the wetlands area in keeping with his future plans for perhaps working out something with the Village of Penn Yan or whomever for some type of public use.

This application had been previously approved in January by the Yates County Planning Board.

It was noted by board members upon review of the survey map that the road frontage was short by 17.26 ft. at the road, being 132.74 ft. according to the survey. This results in an Area Variance of 11.5%. The required road frontage is 150 ft. at the front building line. The location of the concrete building which was in place prior to zoning does not allow for much of any change to this frontage.

There was brief discussion about the shared usage of the driveway by the customers for the 'Jiffy Lube' and those who were coming in to use the 'Go-Kart' track which is the adjacent property. When the Site Plan approval was given for the 'Jiffy Lube' in 2004, it was noted that the 'Go-Kart' track could use the same entrance for its business along the chain link fence, since the State did not want to add another curb cut at this location. As was noted in the February Zoning Board minutes, both businesses have gotten along well together since their hours of business are off-set enough that there hasn't been a problem with their customers with the driveway use or the parking.

The Area Variance Test Questions were read with the following results:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property owners 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: (5-no, 0-yes).
3. Whether the requested area variance is substantial: (5-no, 0-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: (3-yes, 2-no) D.Simpson-no, R.Williams-no, E.Seus-yes, E.Makatura-yes, J.Chiaverini-yes.

The board was in unanimous agreement that this is a SEQR Type II action.

With regards to the two existing businesses, the 'Jiffy Lube and the 'Go-Kart' track, it was noted upon further discussion, that if there were to be an agreement whether formal or informal that it should be separate from the decision of the Zoning Board's Area Variance decision, other than to reference the Site Plan approval of 2004 for the 'Jiffy Lube'.

There being no further discussion, a motion was made by D.Simpson seconded by E.Makatura to approve the area variance for the frontage of this lot at 132.74 front ft. noting that the area of the lot meets the acre requirement. This is a variance of approximately 11.5%. In addition, the zoning board notes the August 4<sup>th</sup>, 2004 Site Plan approval for the 'Jiffy Lube'.

The motion was carried with a poll of the board as follows: E.Seus-grant, R.Williams-grant, J.Chiaverini-grant, E.Makatura-grant, D.Simpson-grant.

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 this locality.

Application #1065 for John Carroll for property at 3408 Guyanoga Rd. Branchport, NY requesting an Area Variance to build a storage garage behind an existing house with less setback from the rear yard property line than zoning requires. This property is located on a lot which faces to roads one being Italy Hill Rd. and the other being Guyanoga Rd. giving the lot two front yard lot lines and two rear yard lot lines.

Mr. Carroll sent an email request to the Zoning Board asking for his application to be tabled until the April Zoning Board meeting so that mailings may reach all parties concerned on time to respond. (Copy on file with application).

A motion was made by R.Williams seconded by D.Simpson to table this application until the April 14<sup>th</sup> meeting. The motion was carried (5-yes, 0-no).

Application #1066 for Twix Pines, LLC for property at 4188 West Bluff Dr. Keuka Park, NY requesting area variances to create two lots that would have less frontage on the east side of West Bluff Dr. than zoning requires for a conforming lot whereas in the creation of the south lot the portion of the lot on the west side of West Bluff Dr. would be off-set from the portion located on the east side of West Bluff Dr.

Mr. William Bader was present to answer questions for the Zoning Board as was the engineer representing the potential buyer for the proposed new lot at the very south end of the property.

Mr. Bader briefly explained to the board members that Twix Pines, LLC was interested in forming a new lake front parcel of property with the formation requiring some property line changes in the current two properties that they own.

The south lot would be 121.66 ft. at the north end and 92.78 ft. at the south end with additional property across the road being provided to meet the required lot size needed and more for property in the lake residential zone.

Mr. Bader noted that the potential buyer of this property wanted to build on the portion of the lot between the road and the lake.

D.Simpson stated that he had concerns about where a septic system for this property might be located since the survey map shows a gully on the east side of West Bluff Dr. for this lot with a culvert underneath the road taking it onto the lake side of the road and gully on down to the lake. He asked if there had been any consultation with KWIC regarding this site and whether a septic system could be put in this area.

Bill Groves, engineer, stated that he had met on site with Paul Bauter and they had done some test holes at the lake side parcel as well as on the upper side of the road and had made the determination that the holes perked well, but there would probably be waivers that they would have to get from the

State Health Department. That was over 2 years ago. He met last year with Colby Peterson and looked at the upper side of the road for the wastewater location with the house on the lake side of the road. Mr. Groves stated that it would be a challenging location but not impossible location.

D. Simpson stated that zoning board members had received an email from concerned neighbors regarding this area variance application (copy on file with application).

D.Simpson stated that he was concerned about the setbacks from the watercourse (gully) requirements as well as the lakeside location of the house. In reviewing the survey map and the useable land the size is narrowed down considerable by taking out the road right-of-way and locating the high-water mark leaves much less than 92.75 feet of width at the south end and less than 121.66 ft. at the north end of the lot. His next concern was how to get across the road with a wastewater system when there is a gully to contend with and a road culvert underneath the road for getting the water from the gully from one side of the road to the other.

Mr. Groves stated that one of the sites north of this one which had a new home built on it actually had less lot size between the road and the lake than this lot.

It was noted by board members, however, that this lot along with the other two lots that had been created on either side of Mr. Barker's lot were directly across the road with more than the required width on both sides of the road and not off-set like the ones under present discussion.

Mr. Bader talked about two other lots down the road from the Twix Pines property that had virtually no shore property at all with land across the road. Board members stated that they didn't know about those parcels of land and perhaps they were pre-existing non-conforming. It is one thing to work with something that is pre-existing zoning; however, to ask for an area variance to create something non-conforming is not something that they want to do as a Zoning Board.

It was also noted by Mr. Bader that they have two existing structures, one on each of the two remaining lots, that share an existing leach field on the east side of West Bluff Dr.

There was discussion as to whether the applicant wanted to have the application tabled to see if he could come up with a different plan of division or to have the board make a decision on this application. The applicant stated that he would rather have the board make a decision on this application for area variance as requested.

D. Simpson made a motion seconded by E. Seus to deny the application as requested. The motion was carried with a poll of the board as follows: J.Chiaverini-deny, E.Seus-deny, R.Williams-deny, E.Makatura-deny, D.Simpson-deny.

Application #1067 for Laurie & Faheem Masood and John & Jurene Antonucci for property at 3623 Bay View Lane, Penn Yan NY requesting Area Variances to add a deck and stairs for a total of 300 addition sq. ft. onto the front of an existing cottage to come no closer to the side yard lot line than the house as it exists today and while the lot coverage will exceed the allowed 20 % by 7% they will not be out of conformance with other existing properties located adjacent to their property.

Mr. Faheem noted that they also have an existing storage building on the property but they use that to store their kayaks and other beach items. The cottage itself is small, and he and his wife bought it together with another couple.

E.Seus stated that he did not have a problem with this application, that the lot and existing cottage were small and that the request would not make their property be out of conformance with other existing properties in the neighborhood.

Mr. Faheem stated that the reason they wanted to have an 'L' shaped deck instead of a rectangle was to be able to have a set of stairs that would allow them access to the lake shore. The ground there has a slate make-up and not very stable. Board members asked if they had considered a cement patio versus a wooden deck. Mr. Faheem stated he had not considered this, again for the reasons that he felt the wooden deck would have more stability.

Mr. Faheem was asked if he would have a problem if they were asked to keep the deck open and not put a roof over it or enclose it. He stated that they did not have a problem with that and the only thing they would maybe like to be able to have is one of those retractable awnings for morning and afternoon sun. The board members did not have a concern or problem with the retractable awning.

The area variance questions were read with the following results:

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

2.Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (5=yes, 0=no).

3.Whether the requested area variance is substantial: (2=yes, 3=no) D.Simpson-no, R.Williams-no, E.Makatura=yes, E.Seus-no, 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: (0=yes, 5=no).

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

It was noted that the Yates County Planning Board had approved this application by default since they did not have a quorum for their regular monthly meeting in February.

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

A motion was made by R.Williams seconded by E.Seus to grant the Area Variances for the deck to come no closer to the north side yard lot line than the existing cottage is already; the deck and stairs not to exceed 300 sq. ft. or 27% lot coverage; the deck is not to have a permanent roof over it or to be enclosed.

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March 10<sup>th</sup>, 2016

The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E.Makatura-grant, D.Simpson-grant, R.Williams-grant, E.Seus-grant.

**OTHER BUSINESS:**

There being no further business, a motion was made by D.Simpson seconded by J.Chiaverini to adjourn the meeting. The motion was carried unanimously. Meeting adjourned.

Respectfully submitted,  
Elaine Nesbit/Secretary