

Town of Jerusalem  
Zoning Board of Appeals

July 12<sup>th</sup>, 2018

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, July 12<sup>th</sup>, 2018 at 7 pm by Chairman Glenn Herbert.

G. Herbert asked all to stand for the pledge to the flag.

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

Others present included: Rob Kinyoun, Katie Smeenk, Richard Blowers, Rachael and Andrew Robak, Karen Ellis, Lin Hough/Contractor for Rob Kinyoun, Matthew and Katrina Sensenig, Lowell and Mary Ann Horst, Karen Doucette, Rebecca Flynn/Barrington, Mary Beth Gamba and Robert Clark.

A motion was made by G.Herbert and seconded by R.Williams to approve the June 14<sup>th</sup> Zoning Board minutes and the June 22<sup>nd</sup> Special Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS;

Board Members were copied with several emails regarding Special Use application #1133 along with a list of 3 phone messages that had been received regarding the same application. A letter was also copied to the board members regarding this application. Copies of emails, phone messages, and Letter are on file. Board Members were also given an email regarding application #1134, with a copy on file.

AREA VARIANCE/SPECIAL USE REVIEW:

Application #1133 for Matthew Sensenig for property at 2203 Italy Friend Rd., Penn Yan, NY requesting a Special Use Permit to build a 16 ft. by 24 ft. structure to raise and house dogs to sell mostly to Pet Shops with some retail sales from this location. This property is located in the Agricultural-Residential Zone.

G.Herbert opened the Public Hearing for this application asking that if anyone wished to speak that they would address the board with their questions and/or concerns.

One resident spoke in support of Mr. Sensenig having the right to have and operate a dog kennel in accordance with the code. He did, however, state that he also expected the same in return, that his right of a peaceful and quiet night's sleep should be afforded him.

He stated that if it became a problem that he would talk with his neighbor, Mr. Sensenig and let him know that he needed to do something about the dogs' barking and waking him up.

Others were present, speaking in opposition to the dog kennel and asking how many dogs there would be at one time on the property. Questions were also asked about the dogs being able to go in and out of their pens and into the outdoor area to run around. Mr. Sensenig stated that the dogs would be able to go in and out at will from their pen area to the outdoor area to run around.

Questions were asked about the feces cleanup and what would be done with this. Mr. Sensenig stated that what wasn't absorbed into the ground outside in the outdoor pen area he would clean up and dispose of in the field. He has approximately 52 acres.

Mr. Sensenig stated that he has considered a privacy fence to help with any barking issues as it would prevent the dogs from seeing out to the woods and anything that might stir them up and start them barking.

One board member asked about the building where the dogs would be housed, the floor would be heated with hot water pipes in the concrete. The building has spaces for eleven dogs with the access to the outside yard that has the chain link fence around it as a place for the dogs to run and exercise.

Board member K.Hanley asked Mr. Sensenig what other type of business he had and he stated that he and his wife operate a small dairy farm at this location. She asked who would be taking care of the dogs and he stated again that it would be himself, his wife and his children.

G.Herbert made a motion to close the public hearing part of the meeting for application #1133 which was seconded by E. Seus. The motion was carried unanimously.

G.Herbert stated that the Site Plan application had been approved by the Planning Board with a recommendation to allow not more than 12 female dogs for breeding purposes. The Planning Board also reviewed the SEQR application for both the Site Plan and Special Use and based on this review determined a Negative Declaration.

E. Seus stated that he felt there was a lack of specificity with regards to how this dog kennel was going to be run and operated. He felt there was a need for more information before this application was approved.

G.Herbert stated that a Special Permitted Use was an allowed Use that the Zoning Board couldn't deny, but could grant with conditions. G.Herbert made a motion accept the special use permit allowing a maximum of 12 breeding females. He then asked each board member if they had concerns or conditions to add to the motion. J.Chiaverini stated that he would like to see a better feces removal plan; a plan for a privacy fence to be put in place if the barking becomes a problem; and the number of adult male dogs for breeding purposes; R.Williams asked about the number of different kinds of breeds and Matthew indicated there would be two different breeds.

The board then discussed changing the number of dogs to fit the number of spaces available to 8 adult breeding females and 3 adult breeding males for the 11 available spaces. K. Smith wanted to see more information and a plan for the privacy fence. K. Hanley was concerned about how the dogs would be kept from barking and so it was added as follows: that the dogs cannot be altered physically to control their barking.

The board was asked about a feces removal plan and who this plan should go to for review and the board was in agreement that it should go to the Code Enforcement Officer. The same with the privacy fence, that there is to be a plan in place that if the barking becomes an issue, the privacy fence can go in.

The motion to grant the Special Use Permit was made by G. Herbert seconded by K. Smith with the following conditions: allowing a maximum of 8 adult breeding female dogs and 3 adult male breeding dogs to fill the 11 spaces provided with Mr. Sensenig to provide an update feces removal plan to the CEO and to provide a plan for a privacy fence should the barking of the dogs become an issue with the neighborhood. In addition, the dogs cannot be altered physically to control their barking.

The motion was carried with a poll of the board as follows: J. Chiaverini-grant, E. Seus-grant, R. Williams-grant, K. Smith-grant, G. Herbert-grant.

Application #1134 for Rob Kinyoun for property at 5928 West Bluff Dr. requesting an Area Variance to remove existing home and replace with a similar structure on a full foundation with less setback from the high-water line and from the rear yard lot line than zoning requires. This property is located in the Lake Residential (R1) Zone with the proposed new home being located on the portion of the lot that is located between the road and the lake.

The public hearing was opened for this application by Chairman G. Herbert who also stated for the record that this application is being looked at as an Area Variance request not the expansion or enlargement of a pre-existing, non-conforming structure since the applicant is removing and replacing the structure.

Mr. Kinyoun was present to answer questions for the board members and to explain his proposed request. He noted that while his application stated that this was an addition, it will actually be a remove and replacement of a single family residence. He noted that he had purchased the family home that had belonged to his parents and in part to his siblings and himself. He was now looking to replace this older home, which was a seasonal home, with one that could be lived in year round. He would be having a full basement that would comply with flood elevation codes and he would also be adding a dormer to the home as well.

Board members had visited the site and noted that there was not a concern with lot coverage for this property.

There was an email from an adjacent neighbor in support of this Area Variance application (Copy on file).

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 some other feasible method than an area variance: (5-no, 0-yes).

3)Whether the requested area variance is substantial: (5-no, 0-yes). The area variances requested are not increased significantly from the existing home.

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: ( 5-no, 0-yes). The replacement home is similar to the home that is there except that this one will be on a full basement for year round living but it will comply with flood elevation codes.

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

This area variance will not have an adverse impact on the environmental condition of the neighborhood or district since the new home is a well-designed plan which will be built to meet flood code elevations and the new home will fit basically within the footprint of the former home.

A motion was made by R.Williams and seconded by K.Smith to close the public hearing. Board members were also in agreement that this was a SEQR Type II action.

A motion was made by R. Williams and seconded by G.Herbert to approve application #1134 as modified by the applicant to remove and replace the existing home with the new home be no closer to the high-water mark than 5 ft. and to be no closer than 31 ft. as measured to the center of West Bluff Dr. All measurements are taken from the closest part of the new proposed home including roof overhangs. In addition, the porch on the lakeside of the home is not to be enclosed.

The motion was carried with a poll of the board as follows: J.Chiaverini-grant, E.Seus-grant, K.Smith-grant, G.Herbert-grant, R.Williams-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

Application #1135 for Steve McMichael for property at 4707 West Bluff Dr., Keuka Park, NY, a new property that is just north of 4726 West Bluff Dr., requesting an Area Variance to build a covered porch on the west side of the new home with less setback from the center of the road than zoning requires. This property is located in the Lake-Residential (R1) Zone with the new home being located on the east side of West Bluff Dr.

Mr. McMichael was present to answer questions for board members and it was also noted that he had missed the ten business days for mailing his notice to the neighbors by 2 days.

Mr. McMichael stated that his list of neighbors consisted of three families and he went to each of them individually to make sure they had received the notices and if they had any concerns.

The affidavit was filed with the ZAP secretary and certified receipts were shown and none of the neighbors appeared at the meeting with any concerns.

Board members had been to the site to note the location of the proposed porch for the new house.

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 some other feasible method than an area variance: (5-no, 0-yes).

3)Whether the requested area variance is substantial: (5-no, 0-yes). The area variances requested are not increased significantly from the existing home.

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

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

The board members were in unanimous agreement that this would be a SEQR Type II action.

A motion was made by G.Herbert and seconded by E.Seus to grant Application #1135 for the covered porch to be built no closer to the center of West Bluff Dr. than 55 ft. as measured from the closest part of the porch including roof overhang.

The motion was carried with a poll of the board as follows: J.Chiaverini-grant, K.Smith-grant, R.Williams-grant, E.Seus-grant, G.Herbert-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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

Application #1136 for Jeff and Karen Ellis for property at 2244 Old Pines Trail requesting an Area Variance to build a 10 ft. by 10 ft. deck to go with an existing above ground pool with less set-back from the front yard property line than zoning requires. This property is located in the General Business Zone.

Mr. Robert Clarke, contractor for Mr. & Mrs. Ellis was present to answer questions for the board members.

There was a question about the lot itself and where the property line was located. It was noted that this is a corner lot and therefore there are two front setbacks for this lot. The setback from the front yard lot line towards Fair Oaks Ave/Eastman Ave. requires a 40 ft. setback.

Mrs. Ellis noted that the privacy fence was already in place when they bought the property. The requested Area Variance is for 21 ft. from the property line to the proposed deck to be located next to the above ground pool. It was also noted that there would be a 36 in. railing all the way around the deck with a gate.

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 some other feasible method than an area variance: (5-no, 0-yes).

3)Whether the requested area variance is substantial: (5-no, 0-yes). The area variances requested are not increased significantly from the existing home.

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

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

The Area Variance is substantial as measured from the center line of the road, however, the road is well below grade and there would be no infringement of this deck on the road.

G.Herbert made a motion seconded by R.Williams to grant the application as applied for with the proposed deck to come no closer than 21 ft. to the front yard property line. The motion was carried with a poll of the board as follows: J.Chiaverini-grant, K.Smith-grant, E.Seus-grant, R.Williams-grant, G.Herbert-grant.

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

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 minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood not alter the essential character of this locality.

OTHER BUSINESS:

A motion was made by E.Seus seconded by G.Herbert to re-open and review the decision that was made for Application #1128 at the June Zoning Board meeting at the upcoming August Zoning Board meeting.

The motion was carried unanimously with a poll of the board as follows: J.Chiaverini-agree, R.Williams-agree, K.Smith-agree, G.Herbert-agree, E.Seus-agree.

A motion was made by E.Seus seconded by R.Williams to re-open and review the decision that was made for Application #1132 at the June Zoning Board meeting at the upcoming August Zoning Board meeting.

The motion was carried unanimously with a poll of the board as follows: J.Chiaverini-agree, K.Smith-agree, G.Herbert-agree, R.Williams-agree, E.Seus-agree.

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

Respectfully submitted,  
Elaine Nesbit/Secretary