

TOWN OF JERUSALEM
ZONING BOARD OF APPEALS

February 10th, 2022

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, February 10th, at 7 pm by Chairman Rodgers Williams.

The meeting opened with everyone standing for the pledge to the flag.

Roll Call:	Rodgers Williams	Present
	Jim Bird	Present
	Earl Makatura	Present
	Lynn Overgaard	Present
	Steve Schmitt	Present
Alternate	Randy Rhoads	Present

Others present included: Lucy Lavery, Lana Grauer, Valerie Newell, Bill Gerhardt/CEO, Daryl Jones/Town Bd., Ginny Turner, Jamie Sisson/Town Supervisor, Steven Thompson, Jerry Thompson, Paul Keller, Laura Tabatcher, John Long, and Attorney Dan Spitzer.

A motion was made by J. Bird and seconded by S. Schmitt to approve the January Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS:

An email and a letter had been received along with 2 photos regarding application #1208 and were forwarded to zoning board members (copies of email and letter) on file with application. Photos were not able to be downloaded but a copy of the two photos were provided and circulated for board members to review and then given to the zoning secretary to put with the application as part of the record.

AREA VARIANCE/SPECIAL USE REVIEW:

Application #1207 for Virginia Turner for property at 2907 West Lake Rd., Penn Yan requesting an Area Variance to build an exterior pavilion (12 ft. by 24 ft.) and a 12 ft. by 12 ft. deck with a 1 ft. overhang that is between two masonry walls that are 22 ft. above the beach area. The requested area variance is for 6 ft. or for the pavilion and deck to be 9 ft. from the highwater mark where 15 ft. is required. Chapter 160, Article VI Section 160-30 A (2). This property is located in the (R1) Lake-Residential Zone.

Ms. Turner and Mr. Sisson were present to answer questions for board members, many of whom had been down to visit the sight. It was noted by Ms. Turner that she had divided an acre of land from her property across the road merging it with the lake property so that her lake lot would be conforming in lot size.

The Planning Board had approved a Steep Slopes application for a proposed new attached garage at this location at their January Planning board meeting.

The proposed 12 ft. by 24 ft. pavilion and the 12 ft. by 12 ft. deck with a 1 ft. overhang will be built between two existing masonry walls that are 22 ft. above the beach area. The pavilion and deck will extend 36 ft. along the masonry wall with the setback from the highwater mark being 9 ft. where 15 ft. is required. This setback is measured from the closest part of the structures including the 1 ft. overhang to the highwater mark.

Board members noted that with the proposed deck and pavilion being located at a height of 22 ft. above the beach area should not have any issues with the highwater level.

R. Williams closed the meeting for public comment and called for the area variance test questions to be read.

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). R. Williams, it is in keeping with the neighborhood.

2)Whether the benefit sought by the applicant can be achieved by some other feasible method than an area variance: (4-No, 1-Yes) J. Bird-yes, the applicant could make the deck and pavilion smaller; L. Overgaard-no, E. Makatura-no, S. Schmidt-no, R. Williams-no, he could make the deck and pavilion smaller but because it is between two walls it is really not a problem.

3)Whether the requested area variance is substantial: (5-no, 0-yes). It is substantial but because it is between the two walls it is not an issue.

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). It is between the two concrete walls.

5)Whether the alleged difficulty was self-created: (5-yes, 0-no). They really don't need to put a deck and pavilion there.

There being no further discussion, a motion was made by J. Bird and seconded by S. Schmidt based on review of the area variance test questions, to grant the area variance as requested. The deck and the pavilion to be no closer than 9 ft. to the highwater mark as measured from the closest part of either structure including the overhang.

The motion was carried with a poll of the board as follows: L. Overgaard-grant, E. Makatura-grant, R. Williams-grant, S. Schmidt-grant, J. Bird-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 nor alter the essential character of this location.

Application #1208 for Eric Kurzik owning property at 10193 East Bluff Dr., PY requesting an Area Variance to build a parking area on the west side of East Bluff Dr. with 2 retaining walls to be placed in the excavated area to maintain the integrity of the bank once it is excavated to provide a parking place that is out of the road right-of-way. The area variance requested is for a setback of 24 ft. 9 in. as measured from the center of the traveled way to the closest part of the retaining wall.

John Long, contractor for Mr. Kurzik was present to explain the requested area variance and noted that to begin with, there were plans to have a pipe put in alongside of the road and make an area to park that was parallel with the road. Mr. Long stated that he had met with the Town Highway Superintendent and was told that his idea was not going to work since it would put them into the road.

It was noted that the bank in this area is quite steep and when excavated out and retaining walls added to maintain the integrity of the bank then there would be a solid concrete structure there at the edge of the road right-of-way that would be a safety concern not having visibility to see both ways around it for oncoming traffic when exiting this parking area.

Chairman R. Williams noted that while he could understand the need to have a parking area, that the applicant wanted to have this area provided with retaining walls to uphold the integrity of the excavated bank, there were also obstacles to the building of this area including erosion issues, safety issues for getting in and out of this area even if excavated because of the hillside with the added solid retaining wall structure that would be right at the edge of the road right-of-way.

Board member J. Bird stated there must be some other place for building a parking area whether he builds his house on the upper side of the road and provides parking on the east side of the road or he puts his parking farther up on the west side of East Bluff Dr.

He also noted that to come closer than 35 ft. as measured from the structure in question to the center of the road is something that they as a board have been advised not to do and to come closer than that is a stretch even though there have been minimal cases where the board may have granted a variance but the circumstances in those cases were very unusual.

Attorney Dan Spitzer was present who spoke with regards to this area variance application. Mr. Spitzer had been asked by the Town Board to be at this meeting. Attorney Spitzer explained to the Zoning Board that it would be in the best interests of the Town for the zoning board to close the public hearing but to adjourn and not act on this application. He noted that the full engineer's report was not in with regards to the slope and topography of the property, and the zoning board has sixty-two days after the final hearing to make a decision on an application.

Attorney Spitzer noted that the Town Board has concerns with structures that have been built closer to the road right-of-way than zoning requires on both East and West Bluff Dr.

DRIVE AMENDED
6-29-22

There has been some discussion of perhaps creating an East and West Bluff Dr. corridor zone that would be similar to an overlay zone similar to wetlands, windfarms, and other type overlay zones.

This would allow for the board to look at changing the zoning for this particular area to allow for the creation of a set of setbacks just for this overlay district/zone. These new setbacks would be crafted into a proposed law that would call for a public hearing to get the public involved.

Attorney Spitzer noted that while the board has the power to grant an area variance, they are only supposed to grant the minimum variance that would not deprive the applicant of reasonable use of the land and is the minimal variance that will accomplish that purpose.

They are also to consider that the variance will not be injurious to the neighborhood nor alter the essential character of the location of the proposed variance.

Board member J. Bird stated that he had real concerns over the safety issues of this parking area and its being right at the edge of the road right-of-way with the proposed retaining wall and was not in favor of this proposal as requested.

Other board members were asked if they had questions or concerns and it was noted that they were all in agreement having concerns over safety issues particularly with the location of the retaining wall(s) and the visibility along that stretch of road from either direction.

A concerned citizen and property owner, Valerie Newell from 10627 East Bluff Dr., was present to state her concerns and reasons for opposition to this application. She noted that when a vacant piece of property is purchased that a property owner should be well aware of the rules and regulations of the Town without having to ask for a variance to build anything on their property. Ms. Newell noted that East Bluff Dr. gets a lot of bicyclers and walkers during the better part of the year particularly along this stretch of road and there are no sidewalks here, and this parking area may even cause the pedestrians to walk out into the road. Cars travel rather quickly along this road and during the summer months, the sheriff's camp has young people that hike along this stretch of road every Tuesday morning.

Because of the steepness of the slope on the west side of the road, Ms. Newell also has concerns with the erosion issues that may be caused by the excavation into the bank by this proposed parking area and the trees that will need to be removed to create this parking space.

Ms. Newell stated that she and her neighbors are not against development but it is important that new owners coming into the area make themselves aware of the rules and regulations of the Town before they purchase a piece of property so that they can help to care for and maintain the integrity of Keuka Lake and the surrounding area by building something that complies with the codes that were adopted by the Town to preserve the assets that we have.

Another concerned citizen, Lucy Lavery from 10411 East Bluff Dr., read a letter from Timothy Smith, owner of Sycamore Point at 10627 East Bluff Dr. (copy of letter on file with application). This letter stated many of the same concerns and reasons for opposition as Ms. Newell.

Lana Grauer, owning property at 10339 East Bluff Dr. owning property to the west of the applicant's property was also present, stating that she concurred with the other neighbors in opposition to the variance application.

Steven Thompson of 10375 East Bluff Dr. concurred with the other neighbors in opposition to this application.

Paul Keller of 10119 East Bluff Dr. agreed with the neighbors regarding the opposition to the application as proposed particularly because of the steepness of the slope in this area.

There being no one else to speak, the area variance test questions were read and reviewed as follows:

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: (0-No, 5-Yes). The steepness of the slope in this area and the safety issue of the parking area so close to the road with the limited visibility when pulling onto the highway at this location.

2)Whether the benefit sought by the applicant can be achieved by some other feasible method than an area variance: (0-No, 5-Yes) The applicant could build in a different location on his property and provide off-road parking; the lot is vacant so there is a lot of potential for where the applicant could build.

3)Whether the requested area variance is substantial: (0-no, 5-yes). The proposed parking area with the retaining walls is right next to the road right-of-way and the requested variance is substantial since the required setback is 65 ft. measured from the center of the road and the requested variance is to be 24 ft. 9 in. from the center of the road. There are also highway maintenance issues and safety issues.

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (0-no, 5-yes). Issues with erosion control because of the steep slope and the water courses in that area that have drainage and flooding issues during the recent severe rainstorms.

5)Whether the alleged difficulty was self-created: (5-yes, 0-no). The applicant purchased the property knowing about the conditions of the property.

The board was commended for taking the time to thoroughly review this application and to consider the concerns of the neighboring property owners before making a decision regarding this application.

J. Long, the contractor noted that it sounded like it was a problematic area to have the proposed parking area in this location and there were safety concerns, however, he noted that if they were to build the parking area on the east side of the road, a retaining wall would be needed there as well and it would be in the road right-of-way. He asked if there was a way to get together with neighbors and the board to find a solution that would be agreeable with everyone without having to keep coming back month after month. He noted that he was not sure what the answer would be and was looking for some possible suggestions for a solution for this issue.

Whether or not Mr. Kurzik knew about the difficulties of building on this lot does not alter the fact that he has the option to make application for an area variance.

There being no further discussion, a motion was made by J. Bird and seconded by S. Schmidt to close the public hearing.

A motion was then made by R. Williams to deny the application for the area variance for 10193 East Bluff Dr. based on the results of the area variance test questions and because it is not safe, there are other options of where the parking area could be provided; the steep slope is a potential problem for continued erosion problems if the parking area were to be excavated even with the installation of retaining walls since the bank in this area is very steep, as well as causing issues for highway maintenance. The visibility in this location for traffic coming from either direction would be a safety issue when pulling out from this proposed parking area.

The motion was seconded by J. Bird and carried with a poll of the board as follows: L. Overgaard-deny, E. Makatura-deny, S. Schmidt-deny, J. Bird-deny, R. Williams-deny.

OTHER BUSINESS:

There was a general discussion about what can be done to tighten up on the number of area variances that are being granted on the East and West Bluff Drive.

It was noted by Attorney Spitzer that by either creating an overlay district or by amending the zoning code with regards to setback from the road right-of-way, then it is like doing a re-set and there are no precedents regarding former area variances that were granted.

Board member J. Bird was concerned that rather than creating an overlay district and more government regulations that the zoning board would be more restrictive in the area variances they grant. He stated that once in a while, there are situations where an area variance can be granted and it would not be an issue.

Attorney Spitzer noted that by having the Town Board setting rules for certain areas, it actually should make it easier for the zoning board to allow for certain variances to be granted only if they meet the criteria for that specific area; for example, someone could be allowed in the 35 ft. parking space but would not be allowed to have a retaining wall built in this area.

Zoning Code is supposed to be compatible with the Comprehensive Plan and what is appropriate for the particular district where a piece of property is located.

It was briefly discussed about having some training for both Planning and Zoning Board members.

The next zoning board meeting will be March 10th, 2022.

A motion was made by J. Bird and seconded by R. Williams to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned.

Respectfully submitted,

Elaine Nesbit/Zoning Secretary