

**TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS**

**November 9, 2023**

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday November 9, 2023 at 7 pm by Chair Rodgers Williams.

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

Roll Call	Rodgers Williams	Present
	Randy Rhoads	Present
	Earl Makatura	Present
	Lynn Overgaard	Present
	Steve Schmidt	Present

Alternates	David English	Present
Alternates	Donald Wright	Present

Others present included: Jim Bird. Daryl Jones, Town Board Liaison. Architects Larissa Reynolds, and Rick Hauser. Residents Richard Foley, Albert and Leslie Troisi, Chris Vaughn, Eugene Hunt.

**COMMUNICATIONS:** None

**AREA VARIANCE/SPECIAL USE PERMITS:**

Area Variance request for **Eshon Mitra App #22-2023**. Esperanza Rd. Address TBD.

Tax Map: 83.04-1-5.113. Requested variance: 42 feet -10" building height where 35' is allowed. 7 feet - 10" variance request.

Architects **Larissa Reynolds** and **Rick Hauser** (In Site Architecture) are present on behalf of homeowners. **R. Hauser** verifies location of home on site plan to Zoning Board members. The applicant plans to build a 2508 square foot, 3 story home. The house sits 100 feet from the road, downhill from the drive. The applicants loved the wooded setting and would like to preserve the area, doing the minimum footprint while maintaining the view of the lake. **R. Hauser** continues that tucking the home off the road is the best spot, near to the top of the site. On a steep slope. There is already a natural opening between the trees.

The house is essentially vertical. A simple living and dining space.

**R. Rhoads** inquiries about how many stories, 4 or 5. **R. Hauser** depending on how you count it. If you come in from driveway and enter on first floor, then there are two floors above and a roof deck. The goal is to get on top of the roof and have a balcony.

He continues when originally submitting plans, the applicants did not think they needed an Area Variance. It seemed like an allowed exception, the only thing that exceeds the height restriction is the stair tower. They want the stairs to be enclosed they can walk up the steps and get to the roof. More recently after developing design plans, and submitting it CEO **B. Gerhardt** that the exception in 160-15B

talks about elevators being exceptions but not stair towers. The stair tower is non habitable space, it is literally a stair that connects to the basement and up to the level of the roof so you can walk out. The only piece of the house that is over height, it is 8 feet wide and 14 feet in length. Just enough to have a switch back stair.

Zoning Board Alternate **D.Wright** asks if the applicants are currently the owners.

**R.Hauser** answers yes, it was subdivided a few years ago. It was originally a bigger piece of land.

Board members have brief conversation about exact location of home as there is not an address given for the empty parcel. **E. Makatura** asks if the property is across from 3411, that is where board members went to. **R. Hauser** points out on site plan and verifies location. **R. Rhoads** confirms that the location of the property is above the property that is chained off.

Chair **R.Williams** confirms that the applicant is requesting a variance to enclose the stairway to access a roof patio.

**R.Rhoads** verifies the variance they are requesting is 8 feet. 35 feet is allowed, they are requesting a maximum height of 43 feet.

**R. Hauser** confirms yes; however, it is not habitable space. Just for the purpose of the stair tower to access roof top.

**R. Williams** states that it is a substantial variance, over 20%, is there another possibility. **R. Hauser** explains that they had originally thought it was an exception, and did not realize until recently they needed a variance. They had thought the stair tower was a granted exception. All the habitable space in the home does sit below the height restriction.

**R. Williams** that there are restrictions on height variances for numerous reasons, to protect view of neighbors. The rest of the neighbors will only be able to see that.

**R. Rhoads** elaborates on fire safety, they have equipment that will handle a 35-foot-tall structure, but not a 43-foot structure. Both safety and visibility of neighbors are concerns.

**R. Hauser** says he understands both reasons and explains that the living spaces are below, the variance is for non-habitable space. All living spaces are below. **R. Rhoads** adds that it is however a combustible space.

**S. Schmidt** says the height variance is in the code for a reason. If the fire starts at the top of the road, you would have to go so high. It is already a steep driveway heading up there.

Board member **L.Overgaard** asks if any neighbors would like to voice their concerns.

**Christopher Vaughn** (3401 Esperanza Rd) reads a letter on behalf of neighbor **Dean Burton** (3411, and 3419 Esperanza Rd.)

**D. Burton** is opposed for the following reasons: It does not blend in with the area, the staircase is unnecessary, there is no physical circumstances in regards to the lot that there would be a hardship, the exception would set a precedence.

**C. Vaughan** stated he welcomes the Mitra's to the area and think the home is bold and interesting but the tower will look like a finger sticking straight up. Nobody wants to look at that. That is the concerns of the neighbors.

**L.Overgaard** asked if the all the trees have dropped leaves, no pines to cover. In the winter you'll be able to see everything. It is set back from the road in that sense.

**C. Vaughan** answered yes, they were looking at the plans earlier he figured it was about 150 feet from the center of the house. Or total width.

Architect **L. Reynolds** said from the edge of the house it is 100 feet.

**R. Rhoads** asks how large the property is. **R. Hauser** looks at site plan, without answer. Just that is a large lot. Most of property will be left untouched.

**R. Rhoads** asks if anyone else would like to speak.

Neighbor **Al Troisi** owns the yellow house down below. He states there is an association for that property that **Alconero's** had put in place with the neighborhood. Does it fit into that; he thinks it does.

He adds that the home will add value to the area, his main concern is drainage for this property. His own driveway has been washed out twice. Where will the water go.

**R.Hauser** answers that the application will be going to the Planning Board for review. The house is a minimum footprint most of the site if surrounded in other areas. All water will be on site.

**E. Makatura** said he cannot see anything going that high, he has not seen over 35 feet in 13-14 years as a Zoning Board member.

**R. Rhoads** agrees, what will be asked in the future, how could it affect surrounding lots. It will be developed more and more.

**S. Schmidt** states the board needs to vote keeping the future in mind. If they grant this request who knows what will be asked in the future. And again, safety wise, a ladder only reaches 35 feet. It is a steep road to start out with.

**R. Hauser** agrees, he wants to make sure any fire and safety issues are addressed. The 35 feet is measured at the midpoint of the house. If the board was willing to entertain the stair tower in general, he would make sure it fits fire safety.

**R. Rhoads** makes a motion to approve the 43-foot-high home, where a 35-foot limit is within code. It is an 8-foot variance over code. **E. Makatura** seconds.

The board answered the 5 area variances questions.

**1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the Area Variance?**

R. Williams – Yes, having that high of a variance will make impact.

E. Makatura – Yes, it is too high.

S. Schmidt- Yes, for the safety and future building.

R. Rhoads- Yes, stairs accesses to patio will impact neighbors.

L. Overgaard- Yes, for all the same reasons. It needs to be kept under 35 feet.

**2. Can the benefit sought by the applicant by some method, feasible for the applicant to pursue, other than an area variance?**

L. Overgaard- Yes, they could figure out something out without the 8 feet.

S. Schmidt- Yes, agrees with Lynn.

E. Makatura- Yes, they could make it lower.

R. Williams – Yes, they could make it not so high.

R. Rhoads- Yes, it is hard to say there is a hardship. It cannot be justified.

**3. Is the requested Area Variance substantial?**

R. Rhoads- Yes.

L. Overgaard- Yes.

S. Schmidt- Yes.

E. Makatura- Yes, it is 8 feet higher.

R. Williams- Yes, it's almost 20% over.

**4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?**

E. Makatura-Yes, it will not look right.

R.Williams-Yes.

L. Overgaard- Yes.

R.Rhoads- Yes, it would be the tallest structure in the area.

S. Schmidt- Yes, same reasons as others.

**5. In the alleged difficulty self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the Area Variance?**

R.Rhoads- Yes, it is self-created. They bought it knowing the location and they should know the Zoning laws.

S. Schmidt- Yes.

R. Williams- Yes, the answer is yes almost every time.

L.Overgaard- Yes.

E.Makatura- Yes.

The board was polled as follows:

L.Overgard- Deny

E.Makatura- Deny

R. Williams- Deny

S. Schmidt- Deny

R.Rhoads-Deny

**R. Hauser** thanks the board for the information.

**NEW BUSINESS:**

Part time Deputy Clerk Emily Gillette will be taking Zoning Board minutes in lieu of Zoning Board Clerk leave.

Next meeting: Thursday December 14<sup>th</sup>, 2023

**D. English** made a motion to go into executive session at 7:33 pm to discuss proposed litigation. **R. Rhoads** seconded.

**E.Makatura** makes motion to close the meeting at 8:01 pm. **R. Rhoads** seconds the motion.

Laura Swarthout/Zoning Secretary