

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

February 9, 2023

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

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

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

Alternate	David English	Excused
	Donald Wright	Excused

Others present included: Daryl Jones, town board liaison. Sarah Purdy, Jim Bird, Wendell Weaver and Gary Smith.

A motion was made by **S.Schmidt**, seconded by **E.Makatura** to approve the January Zoning Board minutes as written. The motion was carried unanimously.

**COMMUNICATIONS:**

Tree Tops application **#22-2022** Interpretation Appeal: Petitioner’s counsel requested an adjournment of the Article 78. Return date February 28, 2023.

Area Variance application **#24-2022**, David and Jeanne Phillips to be tabled until April Zoning Board meeting when applicants can be present.

**AREA VARIANCE/SPECIAL USE PERMITS:**

Area Variance request from Gary Smith. **App # 29-2022**. 4236 Lake Ave. Keuka Park, NY 14478.

Vice Chair **R. Rhoads** makes the motion to review application **App #29-2022**.

Owner and applicant **G. Smith** is in attendance to present to board.

**G. Smith** states that he bought the property in 2010. He would like to put an addition on the west side of the existing main building, adjacent to the garage. A 258 square foot addition, one bay, one story garage. That distance would put him at a 17-foot rear lot line setback. He understands a 20-foot setback is required.

His first request is a variance of 3 feet to facilitate that project. He continues when he had submitted the application, he did the calculations on the lot coverage based on his survey. Survey says it's .388 acres. Code Enforcer **Bill Gerhardt's** survey states it is .288 acres because of the road. The road was included in Bill's. When **G. Smith** initially did the application, he did not believe he needed a lot coverage variance, he thought it was complainant. He then had an additional request for the additional 258 square feet of the addition. The building currently exceeds the lot coverage.

**R. Rhoads** asks what the current lot coverage is. **G. Smith** states that what Bill had calculate that it was 29% and the addition would take it to 31%.

**R. Rhoads** states the limit is 20%.

Chair **R. Williams** – you are almost over 50% lot coverage right now, and the addition would take it over that. You are already impinging on the right of way a bit.

**G. Smith** states that he has an encroachment affidavit from NYSEG that permits that. He talked to them about updating it if variance is approved.

**E. Makatura** says that the only thing he has a problem with is the lot coverage, the applicant is already 9% over, and wanting to add another 2% is too much. **G. Smith** – states he is not offering a defense; he understands that the decks are included in that calculation and a significant portion of that coverage are the decks. In terms of the front deck is several hundred square feet in front of the house, and a deck on the lake side is a few hundred square feet.

**R. Williams** says that it is still lot coverage. **E. Makatura** agrees and says that it is too much to allow more when you are that far over to start with. If you are really close and going over that is different.

**R. Rhoads** adds that if there is a justification for safety or some benefit to the terrain or things that like then the board is a bit more lenient in that regard especially for safety.

**G. Smith** says that the actual addition is entirely not visible from the road. And to the best of his knowledge there was no objection from the adjacent neighbors. There is an existing shed where the proposed addition is. That shed would be removed, and the addition would be placed there. It is not exactly square foot for square foot. He is sort of swapping out the two. He understands the boards positions but in terms of materiality he is replacing an existing shed with the proposed garage addition. He also understands that according to the code there is a section that allows the board to take special consideration for lots that under a half an acre. Section 87 something. He asks for consideration under that section given that it is a small lot. He believes that the board has leeway to exercise their best judgement in granting the requested variance.

Board member **L. Overgaard** states that it is so much over then what the board has ever granted. She is not sure about the small lot coverage section of code, but agrees that it is not visible from the road. She visited the site and said the 3 feet does not matter at all. It is mainly the lot coverage that is so extreme, over anything they've ever done before.

**G. Smith** says he understands the perspective of the board, the existing lot coverage is a preexisting nonconforming scenario that he had inherited when he purchased the property. The actual variance he is asking for is only 2%.

**E. Makatura** says that you are already over 9%. **R. Rhoads** states that it is something far and extreme in anything that the board has ever offered to any homeowner that he is aware of.

**G. Smith** – The earlier question he answers is that the garage is to provide for boats and cars from being stored outside. Keeping the area tidy.

**E. Makatura** states he understands what the applicant is trying to do it's too much.

**R. Rhoads** says it is a slippery slope for the board if they give him 30% or 31% another resident would want that same opportunity. It is a dangerous slope to go down.

The 20% is there for a reason. The reason is emergency vehicles do not want houses to be stacked on top of each other on small lots. Also, for drainage. There is a lot to consider and it is a big ask.

**S. Schmidt** adds that he agrees with everyone. The code says 20% and they are written for a reason. Last year the board had had enough situations that came up under 31%.

**R. Williams** states that the comprehensive plan does not want the Town of Jerusalem to become side by side buildings. They want space around the buildings.

Chair **R. Williams** asks if the board has a motion. **R. Rhoads** makes a motion to consider this, and discuss if the board approves or disapproves. **R Williams** 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, it is too much of a request.

E. Makatura-no, not a problem with doing it, it's just that lot coverage is over.

S. Schmidt – no.

R. Rhoads-no, it does not make an undesirable change in the neighborhood.

L. Overgaard-no, it is not visible from anywhere, it does not change anything.

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

E. Makatura- no, you can't get lot coverage down without taking the house down.

R. Rhoads-no, you would have to remove all your decks. Removing all decks would probably not get him below the 20% lot coverage.

R. Williams- no, the lot is what it is.

S. Schmidt-no.

L. Overgaard-no.

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

R. Rhoads- yes, it is almost 50% over now and it's going to be more than 50% the limit. Yes, it's very substantial.

L-Overgaard- yes, it's very substantial. The board has granted 1 or 2% in the past. This is way over.

S. Schmidt-yes.

E. Makatura-yes, what he is asking for is not that much over. But it's already considerably over.

R. Williams- yes, it's far above anything that board has granted.

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

E. Makatura-no, other than lot coverage.

R. Williams- yes, because it is in opposition of what the masterplan conceives with the town having open space and not being so tight.

L. Overgaard-yes, it's more impermeable coverage of the ground.

R. Rhoads-yes, all the watershed from the roof and impermeable has to go somewhere. All the way around the lake we have slopes. It could put more water on your neighbors and have unintended consequences.

S.Schmidt- yes, he agrees with Randy.

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?**

S. Schmidt-yes.

R. Williams – no, because he bought a lot where lot coverage was already way over. Obviously, what you want to do makes it worse.

L. Overgaard-yes, it is self-created. Bringing it to the attention of this board.

E. Makatura-yes, it's both divided property and lot coverage.

R. Rhoads- yes, it is an option as to whether or not you build something. It is not a safety issue or necessary. It is just an option.

**R. Williams** does a motion to vote on the request. **R Rhoads** seconds motions to vote.

The board was polled as follows:

L.Overgaard- Deny

E. Makatura- Deny

R. Williams – Deny

S. Schmidt- Deny

R.Rhoads- Deny

Applicant **G. Smith** asks the board if he may ask a few questions. He thanks the board for their consideration, he is not surprised by the decision. He would like to ask the board to give some advice. When had made the application, he acted in good faith in regards to the lot coverage calculation. He had spoken with Code Enforcer **Bill Gerhardt** about the coverage.

At the time of application that issue was not brought up. As the board knows **G. Smith** had applied for variance based on the rear lot line. He has reason to believe that would have been considered. He was then told that there was a lot coverage issue. He does not believe had the option to withdraw the application given the investment that he had in the original application. He felt obligated to pursue the second variance knowing it was a significant request having sat through a lot of similar board meeting he understands their position.

Given the investment he had in the application process is there any consideration that the board might be able to provide in terms of the code enforcement officer. In terms of return or partial return for application fee. Had he known in advance he would have not of pursued the request.

**R. Rhoads** asks if the applicant paid two fees. **G. Smith** answer that yes, he paid the original fee that was \$250, and an additional variance fee was \$100.

**E. Makatura** reiterates that the applicant wouldn't have applied for it knowing the lot coverage was that far over. **G. Smith** answers yes, having been in the space he understands the percentage of request over. **R. Rhoads** understands the applicant was already in \$250 might as well put the extra \$100 in.

**G. Smith** adds -Not to mention the time he put time in with NYSEG, an architect and a builder. All the other things he's been lining up. Asking if there is any consideration.

**E. Makatura** states that decision would be on the town board. **R. Rhoads** agrees saying that it would not be the Zoning Board to make that decision.

Town board member **J. Bird** is present and said he will discuss the matter with CEO and town board next week. **G. Smith** said CEO did visit site, and made it clear that the first variance wasn't a big deal but the decision was up to the board. He understands the CEO job is complex, a lot of moving parts and thanks them for the consideration.

Town board liaison **D. Jones** asks about applicant about the NYSEG affidavit allowing him to build in the easement. **G. Smith** explains it is an encroachment affidavit which permits the existing encroachment. When he had purchased the property, they discovered the encroachment. He approached NSYEG before closing., he did not want to purchase the house without it taken care of. There is a utility easement that goes through the backyard of a number of properties as well there. A neighbor did a similar garage in easement as well.

Special Use request from Wendell Weaver. **App # 2-2023**. 2209 Sutton Rd for a dog kennel.

Owner and applicant **W. Weaver** is in attendance to present to board.

**W. Weaver** states that he is at meeting to obtain a special use permit for dogs in the Town of Jerusalem. He would like to go bigger then the 3 dogs he has now. He wants a permit for up to 8 dogs.

**R. Rhoads** asks if he is keeping the dogs for himself or to do retail. **W. Weaver** answers that the dogs will be for sale and they will do online advertising.

**R. Rhoads** states it will be a business, asking what breed the applicant is planning to do. **W. Weaver** states labs, and mini dachshunds.

**L. Overgaard** asks if he already has a greenhouse. He answers yes, the kennel would be in addition to more income and a family thing.

**R. Williams** says it appears there is a house directly across the street, asks if that neighbor is okay with the proposed kennel. He answers, yes, they have a kennel themselves, and came in a few years ago for a special use permit as well.

**R. Williams** says there is plenty of land, the only concern is noise and the neighbor across the way has a kennel of his own.

**L.Overgaard** recalls the neighbor’s application to Zoning Board. He was the last applicant before the law. He has permission for 10 dogs instead of 8. Right before they changed it.

**R. Williams** states the kennel being behind shed should help deter noise too. **W. Weaver** says yes, he has it facing away from neighbors.

**R. Williams** inquiries about the animal waste. The board reviews the waste plan turned in application packet. **R. Rhoads** states he was surprised by the amount, almost 10,000 lbs. **E. Makatura** says that includes bedding and more.

Drainage doesn’t appear to be a problem, states Chair **R. Williams**. The land is pretty flat, **E. Makautra** agrees.

**R. Williams** asks the board if they have anymore questions. Board members do not.

**R. Williams** makes a motion to grant the special use variance. **R. Rhoads** seconds.

The board was polled as follows:

- L. Overgaard- grant
- E. Makatura- grant
- R. Williams- grant
- S. Schmidt-grant
- R. Rhoads-grant

**R. Rhoads** welcomes **W. Weaver** to the community.

OTHER BUSINESS:

**R. Williams** states next meeting is March 9<sup>th</sup>. Two applications on agenda.

He announces there is a web training opportunity February 23<sup>rd</sup>. The training is the dynamic between Planning and Zoning Boards.

Town board member **J. Bird** reminds members there is a joint meeting for town, planning and zoning board members on March 16<sup>th</sup>.

There being no further business, a motion was made by **E. Makatura** and seconded by **R. Williams** to adjourn. The motion was carried unanimously and the meeting was adjourned at 8 pm.

Laura Swarthout/Zoning Secretary