

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

April 20, 2023

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday April 20, 2023 at 7 pm by Vice Chair Randy Rhoads.

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

Roll Call	Rodger Williams	Excused
	Randy Rhoads	Present
	Earl Makatura	Present
	Lynn Overgaard	Present
	Steve Schmidt	Present
Alternates	David English	Present (voting)
Alternates	Donald Wright	Present

Others present included: Sarah Purdy-town board liaison. Tim Cutler, Planning Board Chair. Bill Gerhardt-Code Enforcement. Kathy & Robert Staunton, Jane & Dan Nielsen, Brandi Long & Matthew Long. David and Jeanne Phillips, Ron Stanley.

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

**COMMUNICATIONS:**

Letter and pictures from residents Bob and Kathy Staunton, residing at 2245 West Lake Road opposing Area Variance application **#6-2023**.

**AREA VARIANCE/SPECIAL USE PERMITS:**

Area Variance request from Jane and Dan Nielsen. **App #6-2023**. 2231 W. Lake Rd. Applicants are present.

Applicant **D. Nielsen** states that he had met with previous **Code Enforcer Zac Devoe** regarding the retaining wall. The CEO had told applicants a building permit was *not* required. Vice Chair **R. Rhoads** confirms it was to fix an already existing retaining wall. **D. Nielsen** confirms showing pictures to the board.

Board member **E.Makatura** questions applicants – you extended just a little? **R.Rhoads** asks specifically how much?

**J.Nielsen** responded they did not realize there was any restrictions after speaking with **Zac Devoe**, adding the steps to the south end were original to the property and have been there for years.

Board member **L.Overgaard** states that is the owner’s responsibility to the know the code, if you built a wall that was too close to the side setbacks, it is their responsibility to know that was not okay.

Applicant **J. Nielsen** responds that the walls setbacks may not be within code, but was needed for safety reasons, as well as the restriction from the infringement of their property against that line, it makes a big difference, and the neighbor’s house is 3 ft from the line. How did that ever get approved?

**R.Rhoads** states the board is there not to discuss that.

Alternate **D.English** confirms the applicant is requesting three variances being two side and one front?

**CEO Bill Gerhardt** confirms, yes. Two side setbacks, and one for mean highwater mark. **D.English** states that both sides are less then 10 feet from lot line.

Designer **Ron Stanley** says that is correct. **R.Rhoads** clarifies there is three variances for the wall, one for each of side lot line, and one for mean high water mark.

**R.Stanley** shows board current site plan. It is 9 feet on one end, and 3.5 feet on the other end.

**R.Rhoads** asks **R.Stanley** how close was the previous retaining wall to the high mean water mark.

**R. Stanley** relays it was built right on top of the old one.

**L.Overgaard** asks how many feet is the wall to the mean highwater mark. **R. Stanley** states that the South end is 3.5 fee, and north end is 9 feet. **R.Rhoads** adds that that is where 15 feet is required, when was the original wall built? **R. Stanley** said he is not sure, it always showed up in old surveys.

**R.Rhoads** states that they are asking for a variance on the North side for 2 feet 6 inch, South side is 3 feet 6 inches. Asking for variance of mean high water is 11 ft 6 inch, and 6 feet.

**D. English** adds that it was built on top of previous wall, but extended down.

Board member **S. Schmidt** inquiries if the first retaining wall was engineered. **E.Makatura** answers that wall was probably built in the 20’s, no. **D.Nielsen** answers no.

CEO **Bill Gerhardt** states that it appears to him the current retaining wall is up to code from photos and what **D.Nielsen** had dug up, there are concrete dead mans going through with a trench drain all around the permitter of it with rebar throughout the structure.

**D. English** asks if the discussion with previous CEO **Zac Devoe** was in writing.

Current CEO **Bill Gerhardt** answers that emails provide there was a discussion to meet at the property along with Yates County Soil and Water, and the Highway Superintendent. Nothing in writing as to what was done at that meeting. No concrete decision was provided.

Vice Chair **R.Rhoads** makes a motion to open the public meeting. **D.English** seconds.

Neighbors **Kathy and Bob Staunton** voice their concerns to include applicant not receiving proper permits. Letter voicing concerns on file.

**K.Staunton** states the wall infringes on their property. **R Rhoads** asks if it actually infringes on their property. **K Staunton** yes to the distance, it infringes on the setbacks. They ask the board to please grant what the board would grant in the first place as respect to them.

Neighbor **B. Staunton** reviews pictures with board.

Board Member **E.Makatura** asks why they hadn't come to the town before to notify CEO. **B. Staunton** agrees they should of previously.

**E. Makatura** asks designer **R. Stanley** if he believes the wall is safe. **R. Stanley** answers yes. Short of tearing wall down – they have verified it is safe.

**D. English** asks **Staunton's** if they have a seawall. **B. Staunton** answers yes, they have a preexisting seawall, it is poured concrete. They did not build it. **E. Makatura** adds that a seawall is nice to have.

Board reviews, and has lengthy discussion regarding pictures provided by both **Nielsen's** and **Staunton's** of properties.

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**R. Rhoads** asks if there are any other comments from the public, no other comments. **R. Rhoads** makes a motion to close the public hearing. **D. English** seconds.

The applicants are requesting three variances, Vice Chair **R. Rhoads** suggest they vote on each one individually along with Area Variance questions.

**R. Rhoads** motions to approve 2 ft 6-inch variance on the North side of the wall between neighbor's property and the wall where 10 ft is required. **D. English seconds.**

The board answered the 5 area variances questions regarding the North Side of the retaining wall:

**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?**

- D. English – No.
- E. Makatura-No.
- S. Schmidt – No.
- R. Rhoads-No.
- L. Overgaard-No.

**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 have stopped the wall, the property amount, 10 feet away.
- S. Schmidt-yes, same as L.Overgaard.
- E. Makatura- yes, it should have been better clarified with CEO.
- D.English- no, it needs the northern variance.
- R. Rhoads-no, existing wall was already there.

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

R. Rhoads- no, they are small lots and the wall was already there.

L.Overgaard- yes, it is way more then usual.

S. Schmidt-yes.

E. Makatura-no, it is better to have the wall there.

D.English- yes, it is a third of required setback.

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.

D.English- no, there is no consistency with the neighborhood.

L. Overgaard-No.

R. Rhoads- no, it stabilizes the area.

S.Schmidt- No.

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 could have been 10 feet.

S. Schmidt-yes.

D.English-no.

L. Overgaard-yes.

E. Makatura-yes, it holds the ground back.

The board was polled as follows:

L.Overgaard- grant

E.Makatura- grant

D. English-grant

S.Schmidt-grant

R.Rhoads-grant

**D. English** motions to approve setback of 11-foot 6 inch on the South end, to 6 feet on the North of the mean high-water mark. **R.Rhoads** seconds.

The board answered the 5 area variances questions regarding the mean high-water line:

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?**

D.English- no, it is consistent with neighbors.

E. Makatura-no, same.

S. Schmidt – no.

R. Rhoads-no, wall was preexisting, it is more stable now.

L. Overgaard-no.

**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, it could have been built further back.
- S. Schmidt- no.
- E.Makatura- no, the wall was existing.
- D.English- no, it is subject to location.
- R. Rhoads-no, the amount of excavation would be significant.

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

- R. Rhoads- yes.
- L-Overgaard- yes, 11 feet, 6 inches is.
- S. Schmidt-yes.
- E. Makatura-yes.
- D.English- yes, it is more than half of required setback.

**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.
- D.English- no.
- L. Overgaard-no.
- R. Rhoads-no.
- S.Schmidt-no.

**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 could have been coordinated better.
- S. Schmidt-yes, they could have done better.
- D.English-no, the lot configuration is already there.
- L. Overgaard-yes.
- E. Makatura-yes, same as Randy.

The board was polled as follows:

- R.Rhoads – grant
- S. Schmidt- grant
- D.English-grant
- E.Makatura-grant
- L.Overgaard-grant

**R.Rhoads** motions to grant a 3 foot 6 inch variance on the South side wall to the property line where 10 feet is required. **E. Makatura** seconds.

The board answered the 5 area variances questions regarding the South Side Retaining wall:

**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?**

- D.English- no.
- E. Makatura-no.
- L.Overgaard- yes.
- S.Schmidt-yes.
- R.Rhoads-No, a tree use to be there.

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

- S. Schmidt- yes.
- D.English-yes.
- E.Makatura-yes.
- R. Rhoads-yes.
- L.Overgaard-yes.

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

- E.Makatura- no.
- L-Overgaard- yes.
- D.English- yes.
- R.Rhoads- no.
- S.Schmidt- yes.

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

- D.English- no.
- L. Overgaard-no.
- R. Rhoads-no.
- S.Schmidt-no.
- E.Makatura-no.

**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 shorter.
- S. Schmidt-yes, applicant should have checked code.
- D.English-yes, they met with CEO and DEC thinking they did not need a permit.
- L. Overgaard-yes.
- E. Makatura-yes, it could have been a little shorter.

The board was polled as follows:

R.Rhoads – grant, the wall has been built and the applicant has pushed the limits, but based on what David said and the former CEO led them to think it could be done without permits.

S. Schmidt- deny, they did not go through code.

D.English-grant, the applicant had a meeting with CEO and representative of D.E.C. and proceeded on the basis that there was no need for governmental permits. The engineer has determined the property needs to be protected by this wall.

E.Makatura-grant.

L.Overgaard-grant, although owner should have been aware of code and done their due diligence.

#### **AREA VARIANCE/SPECIAL USE PERMIT:**

Area Variance **App #24-2022**. 4771 E. Bluff Drive Applicants are present, David and Jeanne Phillips. They have brought updated information to Zoning Board.

They originally asked for a variance of two side setbacks and lot frontage variance.

Neighbors recently agreed to sell part of their property. They no longer have side setback issues.

They will have 10 feet on either side now. They will be selling the Phillips 11 feet in width.

The front variance is the only variance they are requesting.

Applicants showed pictures to the board, along with a letter of intent from neighbors.

Phillips spoke with both neighbors, Briggs and Middleton's.

**E.Makatura** suggest a surveyor do the lay out.

**R.Rhoads** states if neighbors sells them '11 x 52' does it make your south side nonconforming property, or is their house far away enough from the new property line.

Applicant **D. Phillips** answers yes that there is plenty of room.

CEO **Bill Gerhardt** answers that all lots will be more confirming, expect front lot width.

**D.English** inquires if they plan to build a garage or shed. **D. Phillips** answers, garage that they can park cars in.

**R.Rhoads** states the variance they are asking for is, they only have 25 feet where 75 foot is required. They are asking for 50-foot variance to the lot frontage.

**L.Overgaard** inquires how the property got separated from the Briggs property without the 75 foot.

**E.Makatura** answers that neighbor **Mike Briggs** put 25 foot for parking.

**D. Phillips** explained that when **Mike Briggs** had brought the property from **Tim McMichael**, he sold a strip of it to the **Middleton's** and took another flag strip, to make it so he would have 20,000 square feet to build stuff. The Middleton's do not boarder them, because he wrapped their property around them.

CEO **Bill Gerhardt** stated that the Brigg's created a buffer, but when it came for review that should have been caught. The subdivision approved by the town and filed at the county created a non-conforming building lot on the upper side of East Bluff Drive in 2014.

**D.English** makes a motion to grant the variance from the required 75-foot road frontage to allow the construction of a garage on the property being contingent on the sale of the property. **E.Makatura** seconds.

**R.Rhoads** adds that they are granting a 50-foot variance where property frontage of 75 foot is required where they currently only have 25 feet.

**D. Phillips** shows the board a picture to show they are only buying a 11' x 52' cutout so they can have 10 feet on each side, but the cutout does not extend to the road frontage. **R. Rhoads** states that the variance they are asking for is actually 50 feet, it does not extend to the road frontage.

**D.English** rephrases the motion. He motions to grant a variance from the required 75 feet of road frontage for a 50-foot variance on the road frontage, provided that a building can be constructed on the lot at a place where all setbacks will be satisfied behind the neighbor's barn. **R.Rhoads** seconds it.

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?**

D.English- no.

E. Makatura-no, lot should have been approved before.

L.Overgaard- no.

S.Schmidt-no.

R.Rhoads- no.

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

L.Overgaard-no.

S.Schmidt-no.

E.Makatura-no.

D.English-no.

R.Rhoads- no, this lot being that this lot has 20 feet of road frontage.

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

R.Rhoads- yes, it is huge.

L-Overgaard- yes.

S.Schmidt-yes.

E.Makaura-yes.

D.English- yes.



**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.

D.English-no.

L.Overgaard-no.

R.Rhoads-no, the slope is gradual- just a driveway.

S.Schmidt-no.

**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, you do not have to build it.

S. Schmidt-yes.

D.English-yes, they are stuck with it.

L. Overgaard-yes.

E. Makatura-yes.

**R.Rhoads** adds that this is a huge variance and with a unique circumstance that typically would not be granted.

The board was polled as follows:

L.Overgaard-grant.

E.Makatura-grant.

D.English-grant.

S. SCHMIDT-grant.

R.Rhoads-grant.

**OTHER BUSINESS:**

Vice Chair R.Rhoads announced that there is a vacancy on the Planning Board.

Next meeting is Thursday May 11, 2023.

There being no further business, a motion was made by **E.Makatura** and seconded by **L.Overgaard** to adjourn. The motion was carried unanimously and the meeting was adjourned at 8:21 pm.

Laura Swarthout/Zoning Secretary