

G.M.L. §239 REFERRAL TO THE YATES COUNTY PLANNING BOARD

YCPD Office Log # 2009-53

Date Received 9/17/09

From: Jerusalem Town Board

To: Yates County Planning Board, 417 Liberty St., Penn Yan, NY 14527

Applicant: Town of Jersusalem

1. Location: Townwide

2. Tax Map #: _____ **2a. Zoning District:** _____

3. Type of Application or Proposal:

- | | | |
|--|---|--|
| <input type="checkbox"/> Use Variance | <input type="checkbox"/> Area Variance | <input type="checkbox"/> Special Use Permit |
| <input type="checkbox"/> Subdivision Review | <input type="checkbox"/> Site Plan Review | <input type="checkbox"/> Zoning Text Amendment |
| <input type="checkbox"/> Zoning Map Amendment (Rezoning) | <input type="checkbox"/> Other _____ | |

3b. Date of meeting at which the local board expects to take final action:

10/21/2009

4. Applicable Sections of Zoning Code: _____

5. Description: A new chapter entitled Property Nuisance Abatement Law in the Town of Jerusalem

6. Reason Referred: 500' from _____

7. Enclose the complete application including the following:

SEQR Documentation

Detailed Description

- | | |
|---|---|
| <ul style="list-style-type: none">• Type of Business• Hours of Operation | <ul style="list-style-type: none">• Number of Employees• Anticipated Traffic |
|---|---|

Site Plan

- | | |
|---|--|
| <ul style="list-style-type: none">• Title, Scale, North Arrow, Dimensions• Portion of the Property to be Developed• Streets, Easements, Utilities• Driveways, Parking (Existing & Proposed)• Structures (Existing & Proposed) | <ul style="list-style-type: none">• Landscape Features (i.e., streams, ponds, hedges) (Existing & Proposed)• Lighting & Signage (Location and content)• Grading Plan, Drainage & Erosion Control (During & After Construction) |
|---|--|

As declared in G.M.L. §239-l, m, and n, it is in the public interest to have the Yates County Planning Board review certain actions that may have inter-community and countywide impacts. Within thirty days of a complete submittal of the referred matter (or at least two days before the referring board's final action), the County Planning Board shall report its recommendations thereon to the referring agency. If the County Planning Board fails to report within 30 days, the body having jurisdiction to act may do so without such report.

TOWN OF JERUSALEM

Local Law No. _____ of 2009

A Local Law creating a Property Nuisance Abatement Law in
the Town of Jerusalem

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF JERUSALEM as
follows:

Section 1. A new Chapter is hereby added to the Code of the
Town of Jerusalem entitled "PROPERTY NUISANCE ABATEMENT LAW
OF THE TOWN OF JERUSALEM", to read as follows:

Chapter ____: PROPERTY NUISANCE ABATEMENT LAW OF THE TOWN
OF JERUSALEM

1. Findings and purpose.

Dangerous and unsafe buildings, structures, and premises threaten life and property in the Town of Jerusalem and constitute nuisances. Premises, whether occupied or unoccupied by human beings, improved or not, may become nuisances, dangerous and unsafe, by reason of faulty design or construction, failure to maintain the structural integrity of a building, lack of proper sanitary facilities, lack of adequate lighting or ventilation, inability to heat properly, failure to keep property free from the accumulation of garbage and refuse, fire, age or general deterioration, violation of state or local codes, laws, rules or regulations, or any combination of these or other factors that create a hazard to the community. This Chapter provides for the safety, health, protection and general welfare of the persons and property of and in the Town of Jerusalem by requiring that such unsafe premises be repaired, cured, cleared, cleaned, vacated, demolished or any combination of these.

2. Declaration of public nuisance.

All unsafe premises within the terms of this Chapter are hereby declared to be public nuisances and shall be repaired, cured, cleared, cleaned, vacated or demolished as hereafter provided.

3. Definitions

As used in this Chapter, the following terms shall have the meanings indicated:

BUILDING — Any building, structure or portion thereof used for any or no purpose, whether vacant or occupied, including (without limitation) residential, business, agricultural, land conservation, or industrial structures.

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer of the Town of Jerusalem or such other persons appointed by the Town Board to enforce the provisions of this Chapter.

GARBAGE — Any refuse from animal or vegetable matter, waste or animal or refuse from kitchen, market, store or house, floor sweepings, table waste or vegetable matter, meats, fish, bones, fat, and all organic waste substances or food substances capable of decay.

REFUSE — Plastics and combustible trash (that has not been packaged or is not part of a business operation), including but not limited to paper, cartons, boxes, barrels, wood, excelsior, tree limbs and branches, yard trimmings, wood furniture and bedding. Also included is noncombustible trash, including but not limited to tires, metals, cans, plastics, metal furniture, small quantities of rock, brick and concrete, glass, metal fixtures, bottles and street rubbish, street sweepings, dirt, ashes, dead animals, junked vehicles, solid market and industrial waste, cardboard, leaves, crockery and similar materials.

STRUCTURAL INTEGRITY — Any condition that threatens the safety of occupants, owners or the general public, such as but not limited to sheathing falling off the side of a building, roofs that are falling in, large holes of four square feet or larger, walls that are separating away from the building, buildings that are leaning at an angle, buildings that have partially or completely collapsed, sagging support beams, floors that are falling in, have holes or are otherwise weak and unsafe, porch roofs dropping or pulling away from the building, chimneys that are leaning or falling apart, bricks that are missing and leave holes, steps that are rotted or coming apart, and decks that are leaning or rotted and falling down or coming apart.

THE TOWN BOARD — The Town Board of the Town of Jerusalem.

UNSAFE PREMISES — Real property including any improvements, buildings, structures, equipment thereon or installations therein, including electrical, gas, water, sewer or septic service, whether above or below ground surface, that are the property owner's responsibility and that are dilapidated, decayed, unsafe, unsanitary, or a fire hazard or are likely to cause injury, sickness or disease and, therefore, are a danger to the health, safety or general welfare of those residing in or upon the property or adjacent to the same or to the citizens of the Town of Jerusalem at large. "Unsafe premises" also includes properties that, because of their condition, are otherwise unsafe, unsanitary or dangerous to the people of the Town of Jerusalem. "Unsafe premises" shall also mean those properties that are in violation of the New York State Uniform Fire Prevention and Building Code, the New York State Public Health Law, or the New York State Sanitary Code. "Unsafe premises" may be the whole or any portion of a parcel of real property; whether improved or unimproved located in the Town of Jerusalem, Yates County, New York.

4. Duties of Code Enforcement Officer.

When in the Code Enforcement Officer's opinion or upon receipt or information that any property is or may become unsafe premises within the meaning of this Chapter, the Code Enforcement Officer shall be authorized to condemn said premises or buildings and to have them vacated immediately if necessary to protect the safety of person or property. The Code Enforcement Officer shall also be authorized to order its repair, if the same can be safely repaired, its securing for safety purposes, its demolition and removal, or any combination of thereof. For any necessary stronger enforcement the Code Enforcement Officer shall make a report in writing to the Town Board of his findings and recommendations in regards to its being vacated, repaired, secured for safety purposes or demolished and removed.

5. Town Board.

The Town Board shall thereafter consider such report and the definitions of this Chapter and by resolution determine, if in its opinion and judgment the report so warrants, that such building or premises is unsafe or dangerous and order its repair, if the same can be safely required, its securing for safety purposes, its demolition and removal, or any combination of thereof, and further order that a notice be served upon the persons designated in No.7 of this Chapter and in the manner provided therein. The Town Board will authorize the Code Enforcement Officer to be in charge of the enforcement of the town order.

6. Contents of notice.

This notice shall contain the following:

- A. A description of the premises.
- B. A statement of the particulars in which the building or property is unsafe or dangerous.
- C. A statement outlining the manner in which the building or property is to be made safe and secure or demolished and removed.
- D. An order that the repair, vacating, securing or removal of such building or condition (nuisance) shall commence within 30 days of service of the notice and shall be completed within 60 days thereafter, unless for good cause shown such time shall be extended
- E. A date, time and place for a public hearing before the Town Board in relation to such dangerous or unsafe premises, which hearing shall be scheduled not less than five business days from the date of service of the notice. Emergency notices shall be displayed in the window at the Town Clerk's office identifying the property and status of action being taken.

F. A statement that, in the event of neglect or refusal to comply with the order to secure or demolish and remove or correct such condition (nuisance), the Town Board is authorized to provide for its repair or securing or its demolition and removal, as the case may be, to assess all expenses thereof against the land on which it is located and/or to institute a special proceeding or action to collect the cost of removal, demolition or repair, including legal and engineering expenses.

7. Service of Notice.

The notice required under this Chapter shall be served upon the owner, his executors, legal representatives, agent, lessee, or any other person having a vested or contingent interest in such unsafe premises or building, as shown by the records of the Town Assessor or of the Yates County Clerk. Service shall be made either personally or by registered or certified mail, addressed to the last know address, if any, of the owner, his executors, legal representatives, agent, lessee or other person having a vested or contingent interest in such unsafe premises or building as aforesaid identified. If service is made by registered or certified mail, a copy of the notice shall be posted on the premises.

8. Conduct of public hearing.

A. The public hearing shall be conducted before at least a quorum of the Town Board.

B. The Supervisor or his or her designee shall preside over the public hearing.

C. The owner of the premises may be represented by counsel at the public hearing and shall have the right to call witnesses in his or her behalf and to otherwise present his or her case in opposition to the Town's case.

D. The strict rules of evidence shall not apply to the public hearing. The Town must prove its case by a preponderance of the evidence.

E. After both parties have presented their respective cases, the Town Board shall decide the case. Such decision shall be in writing and shall be filed with the Town Clerk and mailed to the property owner if the owner's identity is known, and any other person served with the Notice under paragraph 7 of this Chapter at his or her last known residence address within five days of the date of the public hearing. The decision shall be made by a simple majority of the Town Board.

F. Failure of the property owner to appear, either in person or by representative, at the date and time specified for a public hearing shall not prevent the Town Board from rendering a decision.

9. FAILURE TO COMPLY; Action by Town.

In the event of the refusal or neglect of the person so notified to comply with said order of the Town Board and after the hearing, the Town board shall provide for the repair, vacating, securing or demolition and removal, as the case may be, of such building or property, either by Town employees or by contract. Except in emergency cases as provided for herein, any contract for repair, securing or demolition and removal, as the case may be, shall be awarded in accordance with the provisions of the General Municipal Law of the State of New York.

10. Penalties for Offenses.

If the property has not been brought into compliance within 30 days after service of the first notice by Code Enforcement Officer to bring the property into compliance, the property owner or owners or responsible agent of the owner shall be subject to fine in the amount of \$500.00 per week until the property has been brought into compliance. Any unpaid fines within a twelve-month period shall be levied on the property in the same manner as *ad valorem* taxes.

11. Assessment of expenses.

All expenses incurred by the Town in connection with the proceedings to repair and secure or demolish and remove the unsafe building or property, including the cost of actually removing such building or correcting such condition or nuisance or repairing the same, shall be assessed against the land on which such building or condition or nuisance is located and shall be levied and collected in the same manner as provided in the Town Law for the levy and collection of Town taxes or special *ad valorem* levies.

12. Emergency Cases.

Where it reasonably appears that there is present a clear and imminent danger to the life safety or health of any person or property unless an unsafe building or condition or nuisance is immediately repaired and secured or demolished, the Town Board may, by resolution, authorize the Code Enforcement Officer to order immediately the repair, vacating, securing or demolition of such unsafe building or correction of such condition (nuisance). The expenses of such repair, vacating, securing or demolition or correction of such condition (nuisance) shall be charged against the land on which it is located and shall be assessed, levied and collected in the same manner as provided in the Town Law for the levy and collection of Town taxes or special *ad valorem* levies.

13. Administrative liability; defense by Town Attorney.

No Officer, agent or employee of the Town shall render himself personally liable for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of his duties under this Chapter. Any suit brought against any officer or employee of the Town as a result of any act required or permitted in the discharge of his duties under this Chapter shall be defended by the Town Attorney or by counsel

furnished by the insurance carrier of the Town until the final determination of the proceedings thereon.

Section 2. Effective Date. This local law shall become effective immediately as soon as it is filed by the Secretary of State.