



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
White Lake, NY 12786

A Regular meeting of the Zoning Board of Appeals was held on December 21, 2020 at 7:30 PM at the Dr. Duggan Community Center, 3460 State Route 55, White Lake, New York. On the agenda at this time is the following:

In attendance: Steve Morey, Chairman, Richard Conroy, Vice Chairman, Jesse Komatz, Jim Ahearn, Cirino Bruno, Bette Jean Gettel, Code Enforcement Officer, Jacqueline Ricciani, Attorney, and Jannetta MacArthur Recording Secretary.

Pledge to the flag.

Excused: Dan Brey, Wendy Brown, Steven Kaufman, Alternate, and Lillian Hendrickson, Liaison.

Table the November meeting minutes – Resend all minutes to Board Members that have not been approved.

1) *Public Hearing for an Area Variance for an accessory structure to be located in the front yard on 1061 Lake Shore Dr, Kauneonga Lake, known as Bethel Tax Map #: 35-9-10, proposed by Larry & Mary Ellen Seitelman.*

Bette Jean Gettel: Return receipts received. Larry and Mary Ellen Seitelman are in Florida. Pat Mickelson will be presenting.

Pat Mickelson – I am the Contractor for RA Michelson & Sons, representing the client.

Motion to go into public hearing by Richard Conroy second by Jim Ahearn.

All in favor – 5

Opposed-0

Agreed and carried

Steve Morey: Mr. Mickelson could you describe what you will be doing?

Pat Mickelson: It is going to be a 4 ft frost wall, part of the retaining wall with a slope in the bank, to the property line on the side so there is access to the driveway.

Richard Conroy: Using the existing driveway?

Pat Mickelson: Yes. We have some drainage issues to address.



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
White Lake, NY 12786

Richard Conroy: You meet all the setbacks, except you are just in the wrong place.

Pat Mickelson: Yes.

Steve Morey: I was more interested in, I wasn't here last meeting, I need to know what portion of the area variance is being requested. The construction of the building is more the Building Department. We are here when you say you are in the wrong place, what is the deficit?

Bette Jean Gettel: An assessor structure like a garage needs to be located in the rear of the property. This is the front of the property.

Steve Morey: So, is that the only violation?

Pat Mickelson: Mr. Seitelman couldn't come to the meeting, so I am sort of coming to this as a third wheel. He asked if I would stand in for him.

Richard Conroy: The only problem is this is in the front of the property and not the rear yard.

Jacqueline Ricciani: The assessor structures have to be in the rear.

Jesse Komatz: There are other garages in that location.

Richard Conroy: I have at least three other ones in the vicinity that are in the front yard.

Steve Morey: Is there anyone from the public that would like to speak?

Bette Jean Gettel: No, but I have written comment that was requested to be read into the record. A letter from Sheldon and Marilyn Feld - reading into the record. Letter attached.

Motion to receive and file letter by Cirino Bruno, second by Jim Ahearn.

All in favor-5

Opposed-0

Agreed and carried

Cirino Bruno: I don't thing it has anything to do with us.

Jacqueline Ricciani: It's still a comment that you received and is something you need to take into account. How much weight you give it is up to you.



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
White Lake, NY 12786

Jesse Komatz: This new structure do you believe it has any bearing with that ditch?

Pat Mickelson: I don't think there will be any additional runoff from the roof that will affect that.

Jesse Komatz: The rain is going to fall there anyway.

Pat Mickelson: Exactly. And if it is running off the road, I don't think..... I think it is the road....

Steve Morey: There is reference to the Town Highway Department.

Bette Jean Gettel: Where the location is, and where the drainage is, there really is not anything that can be done. I received another letter from the same neighbor. Reading into the record, from Sheldon and Marilyn Feld.

Steve Morey: The 10ft meets the side yard setbacks?

Bette Jean Gettel: Yes.

Motion to receive and file by Cirino Bruno, second by Richard Conroy.

All in favor-5

Opposed-0

Agreed and carried

Steve Morey: As the contractor, do you have anything to add?

Pat Mickelson: As BJ stated I think the neighbor is trying to split hairs, it certainly seems like it is mother nature, I don't believe there is anything that can be done.

Motion to go back into regular session by Richard Conroy, second by Cirino Bruno.

All in favor -5

Opposed-0

Agreed and carried

Richard Conroy: Again, this is not a unique situation. There are other garages that are built in the front yard there. I have documented at least three.

Jacqueline Ricciani: Are you going to review the criteria?



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
White Lake, NY 12786

Richard Conroy: I'm just talking right now.

Steve Morey: Does the board have any other questions or comments? Then I am going to go through the test for an Area Variance. It is as follows:

Tests for an **Area Variance**:

When considering an Area Variance, Boards should understand that they are primarily engaged in a balancing act, weighing public and private benefits. In making determinations whether area variances ought to be granted, ZBA's are now instructed by the statute to **"take into consideration the benefit of the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or the community by such grant"**. Note the complete omission of the term "practical difficulties".

To be sure, it is up to Board members to apply this general language, but the statute provides additional help. It suggests that the Board, in making its determination, also consider whether:

- 1) an undesirable change in the character of the neighborhood or a detriment to nearby properties will be produced by the granting of the variance;

No, there are garages there already, the water situation has been there for years.

- 2) the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

No other options on his property. There are no options to purchase other property. They cannot place a building in the back, the lake is there.

- 3) the required area variance is substantial;

It's not applicable, so it isn't substantial. We are not measuring. It's hard on this property, the property is so small.

- 4) the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district;

No, there are other homes with garages in front of the home. It is a residential area.

Jacqueline Ricciani: The applicant mentioned last time that the materials would match the home.



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
White Lake, NY 12786

Richard Conroy: Yes he did, he said it would match the home.

- 5) the difficulty was self-created, which shall be relevant but not necessarily preclude the granting of the variance.

It is self-created because he wants a garage that doesn't meet the code.

Steve Morey: Any other comments or concerns?

None

Motion to grant Area Variance with the condition that all fees be paid by Cirino Bruno, second by Jesse Komatz.

Roll Call Vote

Jim Ahearn – Yes

Cirino Bruno – Yes

Jesse Komatz – Yes

Richard Conroy – Yes

Steve Morey – Yes

Pat Mickelson: Thank you, everyone have a nice holiday.

- 2) ***Application for a Use Variance to convert a commercial restaurant into a duplex located on 1510 State Route 17B (former Lighthouse), known as Bethel Tax Map #: 34-1-17.1, proposed by Michael Feinstein.***

Steve Morey: Before you begin, Michael, I am looking at the application, administrative appeal, appeal of administrative officials' decision, can you explain that?

Michael Feinstein: I probably don't understand either.

Steve Morey: By definition they are saying you don't agree with what the building department wants you to do, or need to do.

Bette Jean Gettel: He had submitted plans to do an apartment. Based on your zoning code, I had



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
White Lake, NY 12786

to deny it. Two apartments. Therefore, he is in front of you for a Use Variance that is not permitted in that Zoning District and an administrative appeal, so it is up to the board if they wish to grant.

Jacqueline Ricciani: The applicant is pursuing both?

Michael Feinstein: What I am trying to do, is have two apartments instead of keeping it as a restaurant and a bar, which would probably have multiple parking spots. I would like to have two apartments to just rent out in the summer, bring the traffic down, noise down, put everything down.

Richard Conroy: Is that part of the Gateway District?

Michael Feinstein: I actually live right next to it. I bought the property to keep the noise down to do something like this. So, my son said he would move back here, which he does live upstairs now. And honestly I would like to do nothing, but I need to make a few dollars to pay for my Bethel taxes.

Cirino Bruno: There are people living in apartments in that area now who are grandfathered in.

Steve Morey: I know this location very well. Originally that was just a restaurant and a bar.

Cirino Bruno: With an apartment upstairs.

Steve Morey: No, I'm going way back. It burned down, and then it was rebuilt. Then Rich tells me that maybe 08-09 Charlie built an apartment on top of the bar.

Richard Conroy: That was at least in 2004. But there is no permit filed, there is no description filed.

Bette Jean Gettel: Yes there is.

Richard Conroy: There is no description of the property in the tax rolls.

Bette Jean Gettel: Not in the tax rolls, but I have it in the Building Department. That is an assessor issue, not a Zoning Board issue.

Richard Conroy: The things that I look at say nothing about an apartment.



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
White Lake, NY 12786

Bette Jean Gettel: There is an apartment up there because there is a CO.

Jacqueline Ricciani: Currently it complies with the Zoning Code. However, the code does not permit purely residential structures in that Zoning District. So, what he is proposing is not permitted. So, he is either here for a Use Variance, or as BJ said, he applied to the Building Department to renovate this into a purely residential structure. That was denied by the Building Department. The applicant seems to think he is also challenging that determination. If you want to say that the Building Department was wrong, they should have not denied your application for a building permit to renovate, that is one thing you can bring to this board.

Michael Feinstein: The way that it is zoned, it is commercial. I want to get rid of the commercial and make it residential.

Jacqueline Ricciani: It sounds like you are not disputing..... it is only the Use Variance.

Steve Morey: That was my next question. It was marked as an Area Variance; I don't believe it is.

Bette Jean Gettel: It's not an area variance issue.

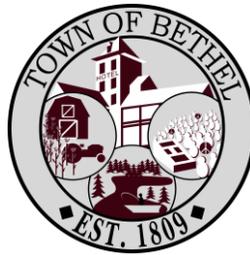
Michael Feinstein: Did I check the wrong box?

Steve Morey: Twice. That's okay.

Richard Conroy: BJ you wouldn't consider rental apartments commercial?

Bette Jean Gettel: Single or multi, either way you look at it, there is no residential permitted there.

Jacqueline Ricciani: Nothing residential is permitted in that area. Under the Zoning Code, three or more units is considered multi, which is not permitted in that district. As BJ points out, nothing residential is permitted in that District. However, when you read the District intent which is taken pretty much verbatim out of your comprehensive plan, it does indicate.... the whole point of that district that it is commercial on both sides. It does say there can be mixed uses with commercial being downstairs, and residences and offices above. The Town decided that is what they want that area to be. I would also point out in the EAF, I don't know if you have seen it yet, it just came in recently. The applicant in the EAF says that the application is consistent with the comprehensive plan, but I would suggest to this board it really is not.



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
White Lake, NY 12786

Bette Jean Gettel: That was checked in error.

Jacqueline Ricciani: The applicant is going to need a Use Variance, and I know you guys are all familiar with the pages, and pages in here is what the applicant needs to go through to get that. I would just ask you to keep in mind that the Town renovated the Town Code, and the Town decided it didn't want to have exactly what this applicant is looking for, a Use Variance.

Steve Morey: Do you have anything to add Michael?

Michael Feinstein: I am just thinking what I would do would benefit Bethel. I think the Town would rather have apartments here, rather than have a bar.

Jacqueline Ricciani: Sir, the board doesn't decide what is good or bad. There are criteria in the code, and you have to present evidence to the board to address that criteria so they can make a determination based upon very specific factors. That is the only way they can function.

Michael Feinstein: I guess I don't know the laws.

Steve Morey: You should research that section of the Code. A Use Variance is very difficult if not impossible to get. And as the code has changed.....

Michael Feinstein: I'm not sure where to go from here.

Jacqueline Ricciani: Variances typically take a few meetings; they are typically not granted in one meeting.

Michael Feinstein: I'm not asking for a miracle.

Jacqueline Ricciani: You have already addressed some of the basics in your narrative which is a great start. This board really needs you to address the criteria in the code.

Cirino Bruno: You may want to have your attorney come.

Michael Feinstein: I do, unfortunately he had to be a judge tonight. Marty Miller is my attorney. He was in court tonight. I thought I would start the process.

Steve Morey: You pretty much have done that tonight. I can't tell you to go out and hire a lawyer, but that would be my recommendation. It is imperative that you research that section of



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
White Lake, NY 12786

the code.

Michael Feinstein: I do have one, and it is Marty. But he had court tonight, his last night of the year, and I guess that was more important than Michael. I am going to get Marty on it.

Bette Jean Gettel: Can you give him the Section of the Code specifically that would help him?

Jacqueline Ricciani: Absolutely.

Michael Feinstein: Then Marty can come. I guess you meet once a month on this day?

Bette Jean Gettel: The third Monday of the month except January and September. The next meeting is the 4th Monday of the month.

Jacqueline Ricciani: 345-50 E2. I can write it down for you. It goes on for 10 pages that describes what you need for the board. These may not all apply to you but everything needs to be addressed. I'm sure Marty is familiar with these variances. If he wants to submit anything ahead of time it needs to be two weeks before the next meeting.

Bette Jean Gettel: Next month will be January 25th. Anything else for this applicant?

Steve Morey: I don't believe so.

3) Administrative

a. Appointment/reappointment of Chairman

Motion by Richard Conroy, second by Cirino Bruno to appoint Steve Morey as Chairman.

All in favor – 4

Abstain -1

Agreed and carried

b. Appointment/reappointment of Vice Chairman

Motion to appointment Richard Conroy as Vice Chairman by Steve Morey second by Cirino Bruno.

All in favor – 4

Abstain-1

Agreed and carried

