



Town of Bethel
Zoning Board of Appeals

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

The Town of Bethel Zoning Board of Appeals held its monthly meeting on April 18, 2016. The meeting was held at the Duggan School, 3460 State Route 55, Kauneonga Lake, at 7:30 PM. On the agenda at this time were the following:

In attendance Steve Morey, Chairman, Jim Crowley, Vice Chairman, Richard Conroy, Jesse Komatz, Cirino Bruno, Dan Brey, Victor Kask, Jim Ahearn, Alternate, Bette Jean Gettel, Code Enforcement Officer, Jannetta MacArthur, Recording Secretary, and Jacqueline Ricciani, Attorney. Also in attendance, David Biren and Mike Cassaro from the Planning Board, Dawn Ryder, Liaison, and Lillian Hendrickson, Town Board member.

Pledge to the flag

Motion to accept minutes from the March 21, 2016 meeting by Richard Conroy, second by Jim Crowley

All in favor – 7

Opposed-0

Agreed and carried

1) Public Hearing for an Area Variance from the setbacks in the FC District, 285 Woodstone Trail, known as Bethel Tax Map#: 55D-1-4.28, proposed by Michael Dibella. (Mednick)

Steve Morey: I know our first agenda item is for a public hearing for an area variance from the setback in the FC District. I would like to delay the public hearing, due to the delay in receiving information tonight. Mr. Mednick if you would like to give us some explanations as to what is being presented tonight.

Michael Mednick: My pleasure. What is being presented is a request for a 22.5-foot variance for a rear yard setback. The house was previously constructed in 2008 or 2009. You have two maps that were presented. One was when the house was constructed, and the second is the most recent map that was prepared by Gary Packer.

Steve Morey: The one from Packer that was done March 1, 2016. It is my understanding that Mr. Packer also did the survey when

Bette Jean Gettel: Originally setup, the development, Mr. Packer did the survey.



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Steve Morey: We do not have a copy of that survey?

Bette Jean Gettel: No, we do not.

Michael Mednick: I may actually have a copy of that one. I do. In any event, one of the issues that has developed, is the rear setback, which was usually based off the 1075 contour line, as you see on these maps, there is usually a benchmark with a description of the water areas to get to the 1075 contour line. That is sometimes affected by the high water marks. Because there was no meets and bounds description originally, with the original 2004 map, that is why I think we need to get some variances in what the rear yards are going to be. That is probably why we have a discrepancy between what was originally done in 2009, and what Mr. Packer is coming up with in 2016. Rather to be safe than sorry going forward especially with a buyer, we are here requesting a variance for the 22.5 ft that Mr. Packer shows on the map, where the house current sits.

Steve Morey: So you are making an application based on Mr. Packer's survey.

Michael Mednick: Yes. That is what is going to satisfy the buyer in this matter.

Steve Morey: For this meeting, is this of any use to us, this other map?

Michael Mednick: I supplied that for information, I didn't want to hide something, I didn't want to make any representations that we were trying to cover something up, and so I wanted to throw everything out to the board so they had all of the information.

Cirino Bruno: Based on Mr. Packer's survey, a greater amount of footage is requested.

Michael Mednick: Correct.

Jim Crowley: That is the house setback from the property line or the house setback from this centerline?

Michael Mednick: The lot line. I believe it would be the darker line you are looking at. Chapin requires a 100 ft from the water to the building, and actually, based on the new information that we have, there are waivers that were provided by Chapin, that BJ was provided, waiving the setback requirements for this house.

Dan Brey: Isn't the 1075 the high water mark?

Michael Mednick: Yes, I believe so. I think part of the issue is, there was never a meets and bounds, and that is probably where there is a discrepancy between the maps.



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Dan Brey: Isn't there a law?

Bette Jean Gettel: When they built the house, they felt it was all-correct. Now they have gone out and surveyed it, the buyer asked for it to be surveyed, they find we have a discrepancy.

Steve Morey: We have a few written correspondences from Woodstone?

Bette Jean Gettel: Yes.

Steve Morey: Have the certified mailings been returned?

Bette Jean Gettel: Yes, I have them.

Motion to go into public hearing by Jim Crowley, second by Dan Brey

All in favor – 7

Opposed-0

Agreed and carried

Steve Morey: Is there anyone from the public that wants to address this?

No one

Steve Morey: Okay. Those correspondences, I think we all received via email?

Bette Jean Gettel: Correct.

Steve Morey: I may be mistaken but it sounds like they are more like covenances, it is more of a legal matter as to what is permitted within the development.

Bette Jean Gettel: Yes.

Steve Morey: I don't know what bearing that would have on.....

Bette Jean Gettel: They just basically wanted to let you know that they are okay with what transpired.

Jim Crowley: Do we have anything from Eagle Creek?

Bette Jean Gettel: No.

Cirino Bruno: Do they know about it?



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Bette Jean Gettel: Yes they do. They have been in communication with me. They do realize the high water mark is a problem. I have spoken with Trevor Wilson.

Steve Morey: Now you mentioned, BJ, there is a discrepancy between these two surveys that we have. I was curious to know, and I haven't had a chance to see if there is a discrepancy between this survey developed by Packer in 2004, as compared to this survey developed now in 2016.

Bette Jean Gettel: I don't know.

Steve Morey: If someone would assist me at looking at these lot lines. Your requested variance request is 22.5 feet. The amount is supposed to be 50 ft.

Jim Crowley: From that line to the deck.

Steve Morey: Any questions from the board? Is there an environmental form that needs to be completed for this?

Jacqueline Ricciani: No.

Motion to close public hearing by Jim Crowley, second by Cirino Bruno

All in favor – 7

Opposed-0

Agreed and carried

Steve Morey: Does the board have any comments?

None

Tests for an Area Variance

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. All the houses in Chapin are pretty much the same.*
2. The benefit to the applicant can be achieved in some other way; *No. Practically, and it is not economically viable to move the house.*
3. The required area variance is substantial; *Yes. It is greater than 50%*
4. The proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district; *No. It doesn't adversely affect any neighbor's*



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property, because there is not a neighbor in the back.

5. The difficulty was self-created, which shall be relevant but not necessarily preclude the granting of the variance; *Yes. The measurements were not correct when the house was built.*

Steve Morey: BJ, from the Building Department, can you make a comment, or do you have an impression on behalf of the Building Department on this request?

Bette Jean Gettel: When the house was built, it is a million dollar home. To turn around and move that kind of structure, it is not economically feasible. The high water mark has always been a problem with all the properties in that area, in the Swinging Bridge, and Toronto Reservoirs. Everything else is up to code. They have a Certificate of Occupancy. There are no violations on the property. It is neat and clean.

Cirino Bruno: Jacy, this high-water mark, the distance is supposed to be so that you are protected against possible floods?

Jacqueline Ricciani: You are asking me for the rationale of why the property line is measured from the high water mark? I don't know the answer to that question.

Cirino Bruno: If in fact it is...

Jim Crowley: This isn't for flood zone, it is for hydro. These two reservoirs they draw the water down to make electricity, the water height is constantly changing, the water technically will never get higher than that, it will spill over in the spillway.

Cirino Bruno: But the recommendation that you be so many feet away from the high watermark.

Dan Brey: I think it is a regulation, government regulation.

Jesse Komatz: Didn't we deal with this a few years back where there is a certain amount of area where people can use along that waterway?

Bette Jean Gettel: Correct.

Jacqueline Ricciani: Do you mean for access? There are certain points of access. This is hydroelectric, and I can tell you personally this water hasn't been near the high watermark in at least the last 10 years.

Cirino Bruno: My concern is that you give the variance, and then it becomes a case of no good deed should go unpunished. I am the buyer, and I get damaged property because the property is too close to



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the high water mark.

Jim Crowley: But you are still 50 feet away.

Cirino Bruno: You understand my general concern.

Jacqueline Ricciani: I understand, but I think from the, I don't want to necessarily speak for Mr. Mednick representing the seller, but I think there is a lot of due diligence that goes into a purchase of this type of a home, and I assume that is something the buyer would have taken into account. He has gone through the trouble of hiring a surveyor, having all of that done, so I am sure it is part of their due diligence for the purchase, they would have considered that and if they thought that would have been an issue, and I think they would have looked for a different property.

Cirino Bruno: Okay.

Michael Mednick: This is the purchaser's request.

Cirino Bruno: Have they placed insurance yet?

Michael Mednick: No, not yet.

Cirino Bruno: Have they tried to place insurance?

Michael Mednick: I don't know, but they have had insurance the entire time.

Dan Brey: Realistically it goes back to the surveyor that is why he has insurance, if he makes a mistake or whatever....

Steve Morey: Are you referring to the high watermark?

Dan Brey: Anything. When they certify something.....

Cirino Bruno: I am happy to hear there is insurance. I have no problem with it.

Steve Morey: This may be an odd question, Jacy, what liability would the town possibly have should we grant this variance if something goes wrong on that part of the property?

Jacqueline Ricciani: Like if there is an act of nature and the property is flooded?

Steve Morey: If it goes above the high watermark?



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Jacqueline Ricciani: Frankly I am thinking the town is probably the last person on the list. I am thinking the contractor might be. If there is that kind of damage.....

Jim Crowley: Steve you are also looking at another 20ft of topography. You would have to hit the high watermark, at 70, and then climb to 1090 to even touch that porch.

Jacqueline Ricciani: This is not a raging river. This is a pretty still body of water and the other thing is that Jim points out, the dam at the end; they are constantly letting water out. I'm thinking if we had that kind of a torrential down pour that it would get to be an issue, it would go over the spillway before it would get to these properties.

Steve Morey: I am personally not comfortable because the variances requested for something that is already erroneously, it is not like somebody is asking us for a variance to build.

Jacqueline Ricciani: I think we have had other applications like this when the structure was already in existence and realized there were problems, there was a summer camp that was here a couple of months ago that needed some variances, they were a hotel, and they wanted to continue as a summer camp, stuff was already in existence.

Cirino Bruno: Steve, if this was a river.

Jacqueline Ricciani: The point is, it is something that is existing. It is not totally unheard of.

Motion to approve application by Cirino Bruno, second by Jim Crowley.

Roll call vote

Dan Brey – No

Jesse Komatz – Yes

Richard Conroy – Yes

Cirino Bruno - Yes

Victor Kask – Yes

Jim Crowley- Yes

Steve Morey – Yes

Motion passed 6-1

2) Application for a Use Variance for a sign to be located at Rivers Edge Restaurant, 951 SR



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17B, Mongaup Valley, known of Bethel Tax Map #: 38-2-63, proposed by Bright Advertising.

Dan Brey: Recusing himself, conflict of interest.

Steve Morey: I would like to seat Jim Ahearn.

We have gone through the public hearing process for this application. We delayed the vote last month because we had an even amount of members. For the benefit of the applicant and the board, I wanted to insure we had an odd number of members here to take a vote on this application. I think unless there are some questions from the board members, I think that is essentially all we have to do. Keep in mind that the recommendation from the County Planning Department was to deny this application. Therefore, in order to approve this application, we need a super majority, which is a majority plus one. In this case that would be five.

Bette Jean Gettel: Correct.

Steve Morey: I did have one question from the minutes from our last meeting. In the minutes, in our test for the use variance,

4 item, the hardship has not been self-created;

We responded yes. I am not sure I understand. We say yes to it has not been self-created; or are we saying yes it has not been self-created. Was that the intent?

Board: *No*

Cirino Bruno: It was self-created. It is self-created.

Bette Jean Gettel: The explanation that you gave, according to my notes, they are not the owner of the property, and they could go elsewhere.

Steve Morey: Okay.

Bette Jean Gettel: Do you understand?

Board: *Yes*

Motion to deny application by Cirino Bruno, second by Jesse Komatz



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Roll call vote:

- Jesse Komatz: Yes***
- Richard Conroy: No***
- Cirino Bruno: Yes***
- Victor Kask: Yes***
- Jim Ahearn: Yes***
- Jim Crowley: Yes***
- Steve Morey: Yes***

Motion to deny passed 6-1

Steve Morey: Sorry, motion is denied.

Jeff Siegel: Thank you all for your time and attention to the matter.

Steve Morey: Dawn, do you have any input for our meeting?

Dawn Ryder: Thank you very much.

Bette Jean Gettel: Did any of you sign up for the class next Monday at CVI? It is from 2 pm – 4 pm.

Jacqueline Ricciani: There is a SEQRA seminar in May in the evening, the Partnership is offering.

Motion to adjourn by Jim Crowley, second by Cirino Bruno

All in favor – 7

Opposed-0

Agreed and carried

Respectively submitted,

Gannetta MacArthur
Recording Secretary