



Town of Bethel
Zoning Board of Appeals

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

A Work Session was held on June 17, 2019 at 7:00 PM at the Dr. Duggan Community Center, 3460 State Route 55, White Lake, New York. A regular meeting of the Zoning Board of Appeals followed on the same date at 7:30 PM. On the agenda at this time was the following:

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

Excused: Jim Crowley.

Absent: Dan Brey, Dawn Ryder, Liaison.

Pledge to the flag.

Seating Jim Ahearn for Jim Crowley

Motion to approve the April 15, 2019 minutes by Jesse Komatz, by Cirino Bruno

All in favor-5

Opposed-0

Agreed and carried

1) Request for a modification of an approved area variance located at the corner of SR 17B and Plank Road, known as Bethel Tax Map #: 38-2-81, proposed by Black Oak Buildings. (Noeth)

Jay Zeiger on behalf of the property owner, Dr. Jamie Noeth, she is the property owner. As you recall, this is Dr. Noeth's Chiropractic office over here, and these are the two parcels, (showing on map), the proposal is to operate a shed business on these two vacant parcels, which together are 1.5 acres. These are pictures, from the manufacturer of these sheds, gazebos.....

Steve Morey: We've been through all that.

Jay Zeiger: The parking is going to be at the Chiropractic office. When we were here for the original variance request, one of the conditions was that all three parcels be combined. We are asking that it be modified, so these two parcels be combined into one. This would remain as a separate parcel. This would be 1.5 acres, and that is .9 acres, and we will have an agreement between the property owners which you can record as what your attorney would feel is necessary. It would be a lease use agreement where this property would have use of parking and that they would have to be in common



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ownership at all times, as long as this business continues, they would have to be owned by the same parties.

Richard Conroy: So if the business goes out of business, and they want to sell those lots, ...

Jay Zeiger: We know this chiropractic office is going to continue for as long as Dr. Noeth decides to continue as a chiropractor. What we don't know is whether the shed business is going to be profitable or not profitable, whether it will be a burden on her time, we just don't want to lose the ability to keep these as two separate lots. We will as long as this business is operating, we will have the same owner and full use of the lots, as if they were combined. In my letter, when we were at the Planning Board, the Planning Board had the condition of their approval as Jacy pointed out, they have to go with what the Zoning Board said, if the Zoning Board was okay to amend it to just combine the two rather than three they would be fine with that.

Steve Morey: Was that the only condition of approval?

Jacqueline Ricciani: No, there were a number of conditions.

Jay Zieger: There were conditions unrelated to this.

Jaqueline Ricciani: There were typical conditions that the Planning Board generally puts on, no signs, buildings not to be permanently installed, can't have access to 17B, only through Plank Road, and comply with the conditions of this board.

Steve Morey: Does everyone understand?

Board nodded yes

Steve Morey: I could be mistaken, but it seemed to me that we based the area variance, on the concept that the two businesses needed 4 acres with all 3 of your properties, you had 2.4, and therefore the variance request was for 1.6 acres. Is that correct?

Cirino Bruno: I don't think so. I think the chiropractic business was grandfathered in on .9. Am I wrong Jacy? And there were two other lots that equaled 1.5. So the chiropractic business is currently operating on .9. So they still needed 1.5 in order to establish a business. The question or not is if we stretch it and give them the ability to operate on 1.5. And what is being proposed is that they use the parking of the .9 and it would be common ownership as long as the shed business remained. And the two lots combined to be 1.5 would forever be a 1.5 lot.



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Steve Morey: Wasn't there a stipulation from the Planning Board that came from the Planning Board that because there were two retail business.....since there are two businesses' you need four acres.

Jacqueline Ricciani: This project started before the Planning Board. And the Planning Board said because you are operating two businesses which each require two acres on these three parcels, you need to get a variance because your total acreage is 2.4 acres for the two businesses and you need 4 acres, so they came here. They got the variance, with the condition that all three parcels be combined. Then went to the Planning Board. Got approval from the Planning Board to operate this business, but one of the conditions from the Planning Board is to comply with what this boards' conditions were. So the applicant is back here so that they only have to combine the two vacant parcels, not have to include the third parcel where the professional office is with an agreement that they will always be under common ownership and that the shed business will be able to use the parking lot of the professional office.

Richard Conroy: That is what you said, right Cirino?

Cirino Bruno: Not really, it's more or less what Steve said. What appears to have happened, these two lots are separate. .9 is done. For purposes of putting a shed business....

Steve Morey: An area variance of 1.6 acres. Let me just go a little bit further. If we go this route, the area variance is actually 1.5 acres.....

Jay Zeiger: .5.

Jacqueline Ricciani: But you can't....

Cirino Bruno: What appears to what happened is that nobody took into consideration when the Zoning Code was rewritten; this building already existed on .9. These two lots are separate. So .9 is happily conducting business where today if I owned the property next door I would need two acres. There are two lots that equal 1.5 acres. So for purposes of putting a shed business on those two lots, a, they need to be joined, and b, they are a half acre short.

Steve Morey: I agree with what you are saying, however, the conversation was that the activity of the business is going to be on the .9 acres because of the parking and the retail sale.

Cirino Bruno: But that takes pressure off us, it helps us reach the determination of giving them their variance because we say you need two acres, where are you going to put your parking. There is already a parking lot available to them. By agreement the lot owner here is the lot owner there, will allow the parking to be there.



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Richard Conroy: One business is going to be leasing space from the other business for parking.

Cirino Bruno: Right.

Richard Conroy: Parking and maybe some office space.

Cirino Bruno: We and the Planning Board would say where you are going to put your parking if you are going to be putting in sheds. There is an answer that takes the pressure off us, as I understand it.

Richard Conroy: I wasn't here for the last meeting. Initially we were only talking about these two parcels, to combine them, and give a variance on them for the two acres.

Cirino Bruno: Unfortunately Jay wasn't available, and he left it to his partner, and he didn't really explain it to his partner, and then we got off on okay you are going to use both properties.

Richard Conroy: From reading the minutes it looks like that was the proposal, not from us.

Jay Zeiger: I was in Arizona and my plane was delayed.

Richard Conroy: I can't see locking the chiropractor office into these two lots, I just can't see it.

Jesse Komatz: We can give a variance that is conditioned, as long as those two can join and same owner owns the two and the building. If that ever gets separated, or either one gets sold, the variance goes away.

Jacqueline Ricciani: No. The variance is going to run with the land, but if the outdoor retail use, the new business, the shed business, if that stops operating, it goes out of business or they move it to a different location, the lots will always be combined. Once those two vacant lots get combined, they are combined forever.

Jesse Komatz: I understand that, what I am trying to say, if she sells the building where she has the chiropractic business.

Jacqueline Ricciani: There will be an agreement recorded with the County Clerk so anybody who is buying that will see that... if they are buying that building the shed business next door is going to have use of that parking lot.

Richard Conroy: If the shed business goes away....



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Jesse Komatz: Then there is no problem.

Jacqueline Ricciani: Correct.

Steve Morey: I thought the variance whether it is by us or by the Planning Board was specific to that shed business.

Jacqueline Ricciani: It was for the purpose of operating the shed business, correct. If the applicant says she wants to change to let's say she wants to say she wants to sell pontoon boats, that is different. She is going to have to come back. This project was approved for the display of these outdoor sheds and that is what it is going to look like. If she now wants to go into a used car lot she will have to come back.

Steve Morey: Not to us.

Jacqueline Ricciani: It depends. She is coming back somewhere.

Steve Morey: The area variance stays with the property.

Jacqueline Ricciani: The variance is to do an outdoor retail use. Not for a used car lot, the variance is for a retail use. If she wants to put another use there, she might need to come back. The site plan is pretty particular for what it is going to be used for, and I think there is going to be too much of a dramatic difference. If she wants to sell

Jesse Komatz: Do you know if you ever sell your house, you have to sell it with that variance on there; people may not want to buy that. It could make the value of your house lower. Someone comes in later and buys that other property, has the right to use that parking lot. By breaking it up, you could actually devalue the house.

Jay Zeiger: Right now she is in control of that. Because she would own the combined parcel for the shed business and the chiropractor business. She would own them both. If she wanted to sell the chiropractor business she would have to sell that with the shed business. If she wanted to close the chiropractor business and keep the shed business operating, she can do that and continue to use the chiropractor business. If she wanted to sell the shed business, she would have to sell subject to the condition that they have the use of the chiropractor parcel.

Jesse Komatz: Once a variance is there it is there.

Cirino Bruno: Once she decides not to do a shed business....



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Jacqueline Ricciani: I have to interrupt for a second because my notes say Jay is offering to prepare an agreement to be recorded for the use of the vacant parcels with the shed business to use the parking lot, and I thought another provision of that agreement would be as long as the shed business is operating there will be common ownership. So that means that while the shed business is operating she can't sell the chiropractic unless she sells both. Okay.

Richard Conroy: Sounds good to me.

Steve Morey: One of our conditions was, and I will read it.

The applicant is obtaining a special use permit from the Planning Board to operate this retail business, nothing else is permitted just for this use, retail business or sheds.

Jacqueline Ricciani: That is what she got from the Planning Board two weeks ago.

Steve Morey: So then we are covered. If the shed business is no longer, she has to come to some board for another business.

Jay Zeiger: Correct.

Jacqueline Ricciani: She can't put in a beauty parlor. She can't put in a shoe store.

Steve Morey: This says specific to sheds.

Cirino Bruno: To answer Jesse, if she no longer has a shed business she is free to sell that 1.5 acres. And that is the benefit. You pointed out the possible detriment.

Jesse Komatz: I don't have a problem with what she wants to do. I am just thinking of her wellbeing after the fact.

Steve Morey: Typically an area variance stays with the property.

Jesse Komatz: Which that is the point.

Steve Morey: Not according to this. This says.....

Jacqueline Ricciani: The variances are granted for a purpose. If there is a single family home and they want to put on a deck and they get a setback variance of 5ft so they can put on their deck. If they never put on that deck, they can't use that variance to do something else, and now puts on an addition. Oh we



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got the 5 ft. for the deck, but we aren't doing the deck, now we are going to do an addition. The variance is for a purpose.

Steve Morey: Okay, I am okay with it then.

Jesse Komatz: But they could do a different retail sale.

Jacqueline Ricciani: It is an outdoor display. That is the whole thing about this, the outdoor display.

Jesse Komatz: So they could put monuments out there then.

Jacqueline Ricciani: Yes.

Jesse Komatz: That's my point, and you can't stop them.

Steve Morey: Yes you could stop them. That is one of the conditions.

Jay Zeiger: I would agree with Steve on this. If they wanted to change the use, they would have to go to a board.

Jacqueline Ricciani: If the use changed it still might be within the special use permit granted by the Planning Board. All this board said was that you have to get permission from the Planning Board which you have done.

Steve Morey: Any other discussion?

Cirino Bruno: No.

Steve Morey: So if I understand we can just make a motion to change the condition....

Jacqueline Ricciani: To amend the condition.

Steve Morey: To amend the condition of the previous.... just the one, that the two properties be combined into one. We should probably list them by number to be combined as one.

Jay Zeiger: The two lots to be combined are 38-2-80.1 and 81.

Richard Conroy: 82



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Jacqueline Ricciani: He's right Rich.

Richard Conroy: Yeah, okay.

Jacqueline Ricciani: Are there going to be any additional conditions that you would like to add?

Steve Morey: I would like that motion to say consisting of whatever that acreage is, 1.5 acres. Any other conditions?

Jacqueline Ricciani: Before you vote, are there any other conditions you want to put on this amended condition, such as the agreement that Mr. Zeiger had offered?

Cirino Bruno: Yes. And those conditions were as long as the shed business exists there would be common ownership of all three lots. And the .9 acres where the chiropractor business is would permit parking for the people visiting the shed business.

Jacqueline Ricciani: Do you want that just as conditions here, or is that going to be a more formalized agreement. I'm not sure the way that Cirino phrased it. That is why I want a clarification.

Cirino Bruno: Parking is available as long the shed business is there and common ownership of the chiropractor business puts the two lots that were not cojoining. Put in a different way, we are amending the last resolution so all three lots don't get cojoined, just the two lots equal to 1.5 acres.

Jacqueline Ricciani: So is that just going to be a condition on the resolution or did you want a separate agreement?

Steve Morey: The agreement has been offered through your letter (Jay Zeiger). Do I need to read that so everyone understands?

Jacqueline Ricciani: I just want my notes to be to clear.

Cirino Bruno: Your notes to be clear should say that they are going to agree to record an actual agreement stating that, right?

Jacqueline Ricciani: That is my question. Is that what you want the condition to be?

Cirino Bruno: Yes.

Jacqueline Ricciani: Thank you. Do you want anyone to review that agreement before it is recorded or



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just have Mr. Zeiger provide a copy for the file?

Richard Conroy: The file is going to be provided to you, and you are going to review it.

Jacqueline Ricciani: All right.

Steve Morey: Reading Jay Zeiger's letter

It says here we are requesting that the condition be modified so as to require the combination of only two parcels of property, 80.1 and 81 and allow for an agreement to be executed to be applicable to parcel 80.2 which the agreement would provide that at no time parcel 80.2 be owned by a different owner than the owner of the combined parcel 80.1- 81, and that the combined parcel 80.1-81 has the use of the office and the parking on 80.2 so long as the shed/gazebo business is conducted on the combined parcel 80.1-81.

Jay Zeiger: I'll draft the agreement Jacy and send to you.

Motion to receive and file letter of June 7, 2019 from Jay Zeiger by Cirino Bruno, second by Richard Conroy.

All in favor – 5

Opposed – 0

Agreed and carried

Motion to amend the resolution of April 15, 2019 by Cirino Bruno, second by Richard Conroy.

Roll call vote:

Jesse Komatz– Yes

Richard Conroy – Yes

Cirino Bruno – Yes

Jim Ahearn– Yes

Steve Morey – Yes

Motion passed.

Jay Zeiger: Thank you very much.



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Jesse Komatz: Good luck!

Steve Morey: Some time ago the board and I don't know if it was in the form of a motion but we agreed to have work sessions beginning at 7:00 pm prior to our meetings. It seems to me that this may be a waste of time.

Richard Conroy: Another part of that was that it was going to be optional as I recall.

Cirino Bruno: I don't think it is always necessary. A complicated matter where you have to go over plans and figure things out, it would be helpful for us to discuss it, in my opinion, and to have the ability to run it by Jacy also before we have the meeting. But matters like this, I don't think is really necessary. Unfortunately I guess you got here at 7pm.

Steve Morey: I have been coming here at 7 pm ever since we made that motion, or the discussion we had.

Cirino Bruno: Jacy, did you call to see if we needed to do this special....

Bette Jean Gettel: I was the one who asked Steve if he wanted to have work sessions prior to the meeting.

Cirino Bruno: You asked Steve, did you tell anyone else?

Bette Jean Gettel: That's because you gentleman had agreed that you wanted work sessions before your meetings, so we did not change anything.

Steve Morey: When BJ sked me, I couldn't recall how we did it as a board, so I didn't think it was my call. That is why I am bringing it up now. It's not only the board, but Jacy comes here, and kind of describes what we are going to get into before the meeting starts. I think we should do it or not do it or ...

Jesse Komatz: Like Cirino said, there are times when you do and you don't need it.

Cirino Bruno: Jacy was here tonight at 7:20.

Jesse Komatz: You should leave it to Steve's discretion. You know what is coming up the day before, or a couple days before. You know if we have something heavy coming on. Communicate with everyone, just text everybody and say we are going to meet at 7 pm this Monday instead of 7:30 pm.



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Jacqueline Ricciani: Usually the agenda is put together two weeks before.

Jesse Komatz: It should be at your discretion, Steve. I think that would be the way to do it.

Bette Jean Gettel: The next matter that I know that is coming in front of your board, which hasn't made it to my desk yet, because they are just doing the survey, a gentleman added additions on a nonconforming use, and the additions are in the setback zone.. He needs a use variance and area variance. He needs two, so that would be something that....

Richard Conroy: Has he come to the board before?

Bette Jean Gettel: No, this is a new one I caught.

Richard Conroy: Is this another bungalow colony?

Steve Morey: So we are going to leave it that the work sessions are at my discretion?

Bette Jean Gettel: And if you have a question about it.... you guys have phone numbers, call one another.

Cirino Bruno: I'll call you if I think I need some explanation, if it is going to require more time than beginning at 7:30 pm. You probably want it yourself. I will touch base with you and see if you want a work session.

Jacqueline Ricciani: My suggestion would be, BJ puts these agendas together two weeks before the meeting. When you look at the notice that she sends out it tells you that there will be a work session at 7 pm and a meeting at 7:30 pm. If it says there is a work session at 7 pm then there will be a work session, if it just says the meeting is at 7:30 pm then there is no work session. If that is the way you guys want to do it, and then that's how you will know what you are doing.

Steve Morey: Everyone happy with that?

Board – Yes

Steve Morey: Another thing is, we did have one interview for our vacant position on this board. On email there was some conversation.....

Bette Jean Gettel: Jannetta has resent the minutes out as two separate documents. The interview was on the second document and will not be on the website. It should not be on the record.



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Back to your applicant. Jim Ahearn was away on vacation.

Steve Morey: Jim was the second applicant?

Bette Jean Gettel: Yes. The third applicant has not shown up for any meetings.

Motion to make the recommendation to the Town Board to appoint Jim Ahearn to the open position on the Zoning Board of Appeals by Richard Conroy, second by Cirino Bruno.

All in favor – 4

Opposed – 0

Agreed and carried

Motion to ask the Town Board to advertise for alternate position by Richard Conroy, second by Jesse Komatz

All in favor-4

Opposed-0

Agreed and carried

Motion to adjourn by Cirino Bruno, second by Richard Conroy

All in favor-5

Opposed-0

Agreed and carried

Respectively submitted,

Jannetta MacArthur

Recording Secretary