

Town of Bethel
Zoning Board of Appeals
 PO Box 300, 3454 Route 55
 White Lake, NY 12786

Present: Stephen Morey, Chairman
 Robert Yakin
 Dan Brey
 Jesse Komatz
 Cirino Bruno
 Richard Conroy

Attendees: BJ Gettel – Code Enforcement
 Jacqueline Ricciani-Attorney
 Jannetta MacArthur-Secretary
 Daniel Gettel-Planning Board
 Dawn Ryder-Councilwoman
 Dan Sturm - Supervisor
 Bernard Cohen - Councilman
 Lillian Hendrickson- Councilwoman
 Vicky Vassmer-Simpson-Councilwoman

Excused Jim Crowley

Pledge to the flag.

The Town of Bethel Zoning Board of Appeals held its monthly meeting on January 27, 2014. The meeting was held at the Duggan School, 3460 State Route 55, Kauneonga Lake, at 7:30 PM. The agenda is as follows:

Jesse Komatz: I would like to mention that there are a few corrections. I was in attendance at the December 16th meeting, and the spelling of Mr. Popolillo should be corrected.

Motion to approve the December 16th minutes with corrections by Cirino Bruno, seconded by Robert Yakin

All in favor-6

Opposed-0

Agreed and carried

- 1) Public Hearing for an Area Variance from the minimum signage standard for a 10' X 20' sign to be located at the corner of SR17B and Pucky Huddle Road, known as Bethel Tax Map # 25-1-18, proposed by American Electric.***

Steve Morey: Our first agenda item is a public hearing for an area variance. There is no one here from American Electric, I understand.

Jacqueline Ricciani: This is for a use variance.

Steve Morey: Use and area variance? Technically we need to run the public hearing as it has been advertised

Jacqueline Ricciani: We do

Steve Morey: BJ, Can I ask you to briefly describe what the applicant had in mind?

BJ Gettel: The applicant stated according to the short environmental assessment form they are going to construct a 10 x 20 V shaped sign on the corner of Pucky Huddle Road and RT 17B in Bethel.

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See attached letters and petition

Steve Morey: I will open up to the public for comment, however I would ask if you are simply going to reiterate something that has already been stated, just stand up and say that rather than repeating what has already been stated. Do we have a list?

BJ Gettel: Yes we do. The first one is Chris McCarthy

Chris McCarthy – Pucky Huddle Road: I find it difficult to speak here tonight. It is the first time since living in Bethel for 24 + years I have ever spoken publicly against something. I don't want to be against this gentleman and his business. I like to see the smaller business' strive, and like to do what I could to make that happen. This is just out of sync. This is farm country. When I first moved here there wasn't a traffic light within 5 miles, and you had to drive 6 miles to get a gallon of milk or loaf of bread, and I liked that. It is all farmland; hopefully it will remain as such. To put a sign up like that, I'm not even sure the gentleman that even wanted it, who proposed the idea; I understand that the gentleman isn't even here tonight. I find that interesting as well. It would be a mistake in my opinion for the Zoning Board to approve such a thing. I thank you for your consideration in this matter. Thank you.

Susan Brown Otto – Pucky Huddle Road: Good evening. Chairman Steven Morey, Vice Chairman Jim Crowley, who is not here this evening, and members of the Town of Bethel Zoning Board of Appeals. I have a copy to share with you. Before we begin, I would like to say I read your legal notice and it states that there is a proposal for one sign, 10 x 20, I would argue that it is 2 signs, 10 x 20. I would like to state that for the record. "My name is Susan Otto. I reside at 200 Pucky Huddle Road. I am a member of the Town of Bethel Planning Board, however, this evening I am not speaking to you in that capacity. Rather, I am speaking this evening as a resident of Pucky Huddle Road.

Several years ago my husband Ray & I decided to make our permanent home on Pucky Huddle Road. Almost every single day of the week I drive down Pucky Huddle Road towards Route 17B and cross Route 17B onto Perry Road, where I drive to the Brown family farm, which is located four miles from Route 17B. I also run on a daily basis from 200 Pucky Huddle Road to the stop sign at the end of Pucky Huddle Road and then return to the Otto residence. Each time I pass by the current American Electric Generator signs.

Pucky Huddle road is a very special road. This is due to several reasons, including the gorgeous countryside, the special people that live on Pucky Huddle Road as well as the fact that it is a dead end road. If you are not familiar with Pucky Huddle Road, you would be astonished how many people live on Pucky Huddle Road. I frequently tell people that living on Pucky Huddle Road is like living in gated community, however we don't have a gate and we don't have homeowner dues.

Hours, days, weeks, months and years were spent on the Town of Bethel's Comprehensive Plan. The public provided feedback as to what the public wanted with the western part of the Route 17B Gateway. The bucolic, rolling hills with hay and corn fields is what the Town of Bethel's residents wanted to keep in this part of Bethel, when they provided input on the Comprehensive Plan. I would like to share with you what our Comprehensive plan provides, as the intent of the Comprehensive Plan:

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(Read from the Comprehensive Plan – Schedule I, Table of Use & Bulk Requirements, G-17B Gateway Commercial District.

After I read the legal notice for this evening's public hearing, I drove down Route 17B between White Lake and Fosterdale. I noted that there are NO large billboards between White Lake and Fosterdale, with the exception of the Bethel Woods sign, on the end of Hurd Road, along Route 17B. I believe that should the area variance be granted for the two American Electric billboards, a precedent will be set and before too long, there will be numerous, huge billboards dotting what was once farmland and rural countryside.

I may be dating myself; however, I do remember when the Highway Beautification Act was passed in 1965. Then President Johnson and his wife Lady Bird Johnson were committed to the Highway Beautification Act with the regulation of billboards along our town highways, a significant part of the legislation, with the goal being to enhance scenery.

New York State Town Law: Section 267-b details permitted actions by a Town Board of Appeals. It specifies six points regarding the granting of AREA VARIANCES by the Zoning Board of Appeals: (See attached document).

Point 1 - Will the granting of the American Electric Company billboard produce an undesirable change in the character of the neighborhood? ANSWER – YES

Point 2 – Can the benefit sought by the applicant be achieved by some other method, other than the area variance? ANSWER YES – ERRECT THE BILLBOARD ON THE EASTERN PART OF ROUTE 17B

Point 3 - Is the requested variance substantial? ANSWER YES! TWO 10' X 20' SIGNS, FOUR FEET OFF THE GROUND ARE BEING REQUESTED. IN MY OPINION, THIS IS SUBSTANTIAL

Point 4 – Will the proposed variance have an adverse effect or impact on the physical or environment conditions in the neighborhood or district? ANSWER YES

Point 5 – Whether the alleged difficulty was self-created? ANSWER YES.

Point 6 – The ZBA, in granting the area variance, shall grant the minimum variance deemed necessary and adequate and at the same time preserve and protect the character of the neighborhood. IN MY OPINION, NO VARIANCE SHALL BE GRANTED IF THE CHARACTER OF THE NEIGHBORHOOD.

Therefore, based upon the above, I believe there is only one way that you, the members of the Town of Bethel's Zoning Board of Appeals can vote on the area variance request and that is to vote NO and deny the area variance request by American Electric Company. Thank you gentlemen for your consideration."

Bob Rother: Good evening. I'm not going to beat a dead horse. I agree with everything that has been said so far, and I would fully oppose any variance.

Ron Borelli: I live on 164 Burr Road. I should know better than to follow Susan. The sign is no larger than the other signs on 17B, which is Pierson Construction, the taxidermy. There are several signs around Dr. Duggan Road; they are all the same size. Everybody sees those as well as they see American

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Electric. I drive by the American Electric sign at least twice a day, every day. When Tom Shepstone was here and they were working on the comprehensive plan, the number one thing was to keep the rural character of Bethel. If we start with big billboards, everybody said from the beginning right to now, keep Bethel rural. That doesn't mean you can't improve things, but putting up large billboards, that is not one of the things we need to do, so I am against it, and I hope you vote the same way. Thank you

Tom Wasserman: I agree with everything that was said, I have nothing to add really, I agree with not granting the variance.

Denise Frangipagne – Hurd Road: I have some comments. Most of what I had written has already been said. I want to draw your attention to the comprehensive plan, because I know that where you sit you have a lot to absorb in the zoning, but I think sometimes we forget where that zoning has come from. The comprehensive plan is a document that... in the distant past I had the opportunity to serve on the committee to help rewrite that plan, so I have some knowledge of how we came to be we are. At that time the town had also retained a planner to facilitate the process. What really brought this plan to where it is today was the information of survey's, public meetings, and also public hearings, like we are having tonight. It was adopted in 2006, as the vision for the Town of Bethel. Following that, we adopted new zoning. That is what you have as your guideline. One of the many things accomplished in the Bethel Comprehensive Plan was the evaluation and creation of the districts, which have descriptions and guidelines to their varying uses. Again, in addition to health and safety, the intention of this plan and the zoning was to maintain community character. It also helps economic development, job creation, code enforcement, and preservation of community character. That zoning also gathered community input. Getting back to community character, it is not about preventing things from happening, when we have hearings, people feel like we are trying to prevent something, really what community character is, is about balancing appropriate development, and the impact within existing activity with the intention of upholding that long term vision, that is the plan that I am upholding. The variance as requested is located in the gateway, and the definition has already been mentioned, so I won't belabor that, it is the most rural part of our town, and the Ag District, it also specifically states no billboards. That is why it has come to you as you know. Billboards are known as outdoor advertising. They are typically seen on freeways. In fact the Department of Transportation used the term outside advertising when referred back to you. I just want to leave you with this thought, and that is that a plan is only as good as it is implemented. To often plan's sit and collect dust. That is not the case with the Town of Bethel. We are very fortunate in Bethel that we have a solid plan that was created by an engaged community, we have appropriate and effective zoning, and we have volunteer boards such as yourself and the Planning Board. We have resources through grants, and have received some grants to support signage on 17B, to work with small business' to put these signs up, and appropriate signs that meet our codes so there isn't a need to change our code to accommodate. We have business' that are willing to work with our code. We also have the mechanism to be flexible when it is necessary and appropriate, but I would say this is not one of those times. I want to thank you for your time

Jeff Allison – Hurd Road: I agree with all of the statements that have been made here tonight about the sign. I do think Bethel needs to be pro business. But the business I would like it to consider would be tourism. New York State collects data every year. The most recent data that they have is for 2012. For

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Sullivan County there are 4,397 tourism jobs in the county. That accounts for 15% of our total employment. It accounts for 60.1 % of all labor income in the County. The average household in Sullivan County would pay an addition of \$1,502 per household to maintain the same level of government revenue, if it weren't for tourism. That is what this board needs to support.

Susan Harte – Perry Road: I am representing Perry Road, which is opposite of Pucky Huddle. I just want to reiterate what everyone else has said. I believe in the rural character in our neighborhood. The sign is very uncharacteristic so I am opposed. I encourage you to vote no.

Philip Jacobs – 10 Bernhardt Road – I will begin my referencing the experience in Vermont. I will read a little bit. Where the billboard law was under consideration in 1968. That is 45 years ago. Advertisers and property owners who made money objected to the ban. Bu they have been won over. Vermonters live in a more attractive environment, and the law has been forbidden. Vermont attracts tourists, B and B's without the clutter of advertising. The public good is secured. Businesses', they find other ways to advertise. Vermonters like people who live here, highly value their farm and landscape. The Vermont law to ban signs was passed in 1968; they go on to say, the growing movement against outdoor advertising started in 1929. They are almost a century ahead of us. They got a boost in 1943; Vermont Supreme Court said property owners do not have any rights to advertise on billboards adjacent to public roads. In 1967 a law was sponsored by Ted Rio of South Burlington to eliminate billboards even from the interstates. The state was getting well covered with billboards along major roads, to make Vermont distinctive. I would say the same thing applies here. The other towns when you come from Monticello have lots of billboards, great, let them. I am a lifelong resident of Bethel. I probably am the only person that patronized the Ritz movie theatre. They used to have a billboard. It was taken down. I am against this sign. I want to point out, we do have casino gambling, and we will have billboards. If you allow this billboard, the casinos will want to put up all kinds of billboards in Bethel. The billboards should stay in Las Vegas.

BJ Gettel: That is all that has signed up Mr. Chairman. I don't know if there is anyone else.

Steve Morey: Is there anyone in attendance in the public here tonight that received the certified mailings within 500 ft of the proposed application?

No one in the audience

Steve Morey: Have we received the return receipts?

BJ Gettel: I have not received any of the receipts from the applicant

Steve Morey: I will apologize because the applicant is not here, I do not know why the applicant is not here tonight, but because we have an advertised public hearing we have to go through the procedures. My question to the board is do you see any reason to make a continuation of this public hearing or shall we entertain a motion to come out the public hearing and go back in to our regular session

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Motion to go into regular meeting by Cirno Bruno, second by Richard Conroy

All in favor – 6

Opposed-0

Agreed and carried

Steve Morey: Anyone who has made a presentation from something they have written, if you are willing to leave a copy of what you read from, for the record, we would appreciate that.

BJ Gettel: I will email all of those documents to Jannetta so that she can make them part of the minutes.

Steve Morey: Also the sign in sheets so that we have everyone's addresses'

BJ Gettel: Yes

Motion to receive and file all of the correspondence that has been read and received from the public, 9 items, by Cirino Bruno, second by Richard Conroy

All in favor – 6

Opposed-0

Agreed and carried

Jesse Komatz: I just want to bring to your attention, the size of that billboard is the size of that wall, ceiling to floor. That is a huge sign. I just want you to understand how big that is

Steve Morey: The building department did give the permit for the existing sign

BJ Gettel: Yes. The existing sign is 4 x 6, according to Town Code; I can authorize a permit for that. If it is larger than that it has to go to the Planning Board.

Steve Morey: However, it is a V shaped sign. It is my understanding, from what I have read anyway in the code book that a two-sided sign is permissible and my interpretation of that is a flat surface sign has identical information on either side. Would the sign that exists be considered a nonconforming use? And do the rules for nonconforming uses apply if this were the case? That is a question that comes to my mind; I just don't know what the answer is.

Jacqueline Ricciani: What they are requesting if they were present would be... What's there right now I believe was permitted at the time it was erected. Under our code, signs of that size are permitted up to 24 square feet. Up to 24 square feet it is within the authority of the Code Enforcement Officer to issue a permit for a sign. Once we get into billboards, billboards are not permitted. They are not addressed in the code.

Cirino Bruno: If I understand the application, it is 200 square ft twice. My interpretation of that it is more than 400 sq ft.

Jacqueline Ricciani: There is language, if I can find it.....

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Cirino Bruno: I will rescind that. It is more than a slight variance

Jacqueline Ricciani: When you deal with area variances, this board usually starts with what is permitted, and then measures that against what is being requested. The Planning Board has the authority to allow ground signs which this would be, that do not exceed 64 square ft. So if you want to use 64 square ft the maximum allowable for an area variance. However, that is separate from.... if you determine this is a billboard, billboards are not permitted. One of the things that the Zoning Board of Appeals does is interprets the code.

Steve Morey: Except there is no definition of billboards in our code because it is not a permitted use.

Jacqueline Ricciani: I don't know if that is why there is no definition for billboards. When codes are created it is very difficult to anticipate all situations that could arise, that is why we have a Zoning Board of Appeals to make those interpretations when things come up

Steve Morey: You mentioned Jacy, that technically that this is considered both a use and an area variance; therefore I believe we need to review our tests for both of those cases, our criteria in terms of deciding on this

Jacqueline Ricciani: Unfortunately with the applicant not being present, and not knowing what notices were sent out, the better place of caution would be to assume that the notice was only for an area variance. It really wouldn't be proper to proceed under something that there was notice but without the applicant being present, it is difficult to know for sure.

Steve Morey: What is the pleasure of the board?

Jacqueline Ricciani: Before we get to SEQRA, I need it to be noted for the record the applicant does not own the land. We do have a proxy from the owner, Jon Rossal, giving permission for the applicant to make this application. The owner is aware of the request.

Richard Conroy: Excuse me, who do you have as the owner?

BJ Gettel: Jon Rossal.

Richard Conroy: I have Robert and Hilda Rossal. Who authorized this sign?

BJ Gettel: Jon Rossal

Richard Conroy: Jon Rossal is not an owner

Jacqueline Ricciani: Jon is the son

Richard Conroy: He's not the owner as far as the title goes.

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Steve Morey: Should we continue with the SEQRA?

Jacqueline Ricciani: We have new forms now.

Steve Morey: Yes, they were handed out at our last meeting.

Jacqueline Ricciani: You need to determine if there is an impact, if it is small, or if it is moderate to large, once you have gone through it, once you have gone through the form and answered all of the 11 questions, then you need to go back evaluate for those impacts you have identified how large they are. It is quite a process now, now that the form has been revised.

Steve Morey: Dan you mentioned something, I don't know if it was the size of the sign in relation to the Comprehensive Plan, the gateway?

Dan Brey: There is only certain criteria for the gateway in the Comprehensive Plan; you mentioned the allowable square footage.

Jacqueline Ricciani: According to the code, if somebody wants to put up a sign more than 24 square feet, they need to get approval from the Planning Board. For a freestanding sign, the code reads that ground signs are permitted but it can not exceed 64 sq feet in surface area each, or 6 ft in height. When we are talking about area variances the first thing you need to establish is what is permitted, so the most that could be permitted is 64 sq feet. This applicant is seeking a variance of 200 sq feet.

Steve Morey: If it is 4 ft off the ground before it is even constructed, it is 14 ft in height?

Jacqueline Ricciani: He is looking for 10 ft in height.

Short Form SEQRA
 Parts 2 and 3:

1. Will the proposed action create a material conflict with an adopted land use plan or zoning? Regulations? Yes, there is a moderate to large impact.

Robert Yakin: We can refer to 345 – 18 A to answer the question. This use for this according to the Town master plan was to provide a visual transition between rural and commercial areas in the town and the adjoining towns and the Performing Arts District; I think a sign of that size would negatively impact that desire of the master plan.

2. Will the proposed action result in a change in the use or intensity of use of land? Yes. There is a sign there. It does change the intensity. Moderate to large impact.

Robert Yakin: You are referring to the change in the size of the sign as the intensity

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Cirino Bruno: It is obviously no to the first part. The second part doesn't need an explanation.

Jacqueline Ricciani: One thing to keep in mind when evaluating these impacts is the duration. If this is something that is going to have a limited impact because it is only.....

Cirino Bruno: The nature of signs is that they have to be permitted every year. If you allow it for one year, and there is no change in the sign, I see no reason why it should be denied the second year. We have no way of determining whether American Electric is going to remain in business.

3. Will the proposed action impair the character or quality of the existing community? Yes, moderate to large

Steve Morey: In its size alone it would have that impact.

Jacqueline Ricciani: How would you characterize that impact?

Cirino Bruno: This is a rural non commercial area. A 200 sq ft advertisement would have a large impact

Jessie Komatz: It goes against the town's comprehensive plan

Jacqueline Ricciani: Would you say it is more moderate or large in terms of its environmental impact

Steve Morey: My personal opinion would be that it would be large, because the reference has been made to something that we would define as a billboard, rather than simply a sign

4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? No.

5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? No.

6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? No.

7a. Will the proposed action impact existing public / private water supplies? No.

7b. Will the proposed action impact public / private wastewater treatment utilities? No.

8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? Yes, moderate to large.

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Bob Yakin: It would simply have a negative impact on the area there. It would negatively impact that was considered a historic building, the old tollhouse.

9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, water bodies, groundwater, air quality, flora and fauna)? No.

10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? No.

11. Will the proposed action create a hazard to environmental resources or human health? No.

Part 3 reads that the for every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact will or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Steve Morey: There were 11 questions, out of the 11 there were 4 that we answered as moderate to large impact.

Jacqueline Ricciani: Now that you have gone through this, there are basically two options available to you.

Steve Morey: Yes, I was just getting to it. The two options are, check this box if you have determined based on the information and analysis above and any supporting documentation that the proposed action may result in one or more potentially large or significant adverse impacts and environmental impact statement is required or check this box if you determined based on the information and analysis above any supporting document that the proposed action will not result in any significant adverse environmental impacts. What I was leading to is essentially 25% or very close, 22% has a moderate to large impact, but the other percentage, 70 odd percent, my thought is no, is that we don't consider this to have negative impact.

Richard Conroy: I agree with Steve

Steve Morey: An environmental impact statement is required, or the action will not result in any significant adverse environmental impact.

Motion based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts by Richard Conroy, second by Jesse Komatz

All in favor -6

Opposed-0

Agreed and carried

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Steve Morey: A use variance may be granted by ZBA's only if the applicant meets certain tests. The statutory rules, which are easy to understand, specify what must be proved. In order to obtain use variances, therefore, applicants must now demonstrate that the zoning regulations have caused them 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; *Yes. We would be introducing an element that doesn't exist in the neighborhood. It is a rural neighborhood. There are no large advertising signs in the area. It will be against the character. It would be a detriment to the nearby properties in the area*
- 2) the benefit to the applicant can be achieved in some other way; *- Yes. He can move his sign to a more appropriate area, he can keep his 4 x 6 sign, there are other means of advertising*
- 3) the required area variance is substantial; *Yes. It is 9 times larger*
- 4) the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district; *Yes. The sign is unappealing*
- 5) the difficulty was self-created, which shall be relevant but not necessarily preclude the granting of the variance. *Yes. It is their sign. He can keep his current sign*

Steve Morey: Any other comments?

Jacqueline Ricciani: I do want to go back to one thing. The sign that is there currently is 24 sq ft, however as we discussed before, the Planning Board could approve up to 64 sq ft, so when you are evaluating the size of the variance it is not from what is existing, it is really from the maximum allowed. So it would be from the 64 sq ft. He decided to come here first. So it would be from 64 to 200 which is still 300 times what is allowed by code. I was just bringing it up so you have perspective.

Steve Morey: We need a motion to either approve or deny this application.

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

Jacqueline Ricciani: Based on

Cirino Bruno: On the recommendation of the County, The town’s comprehensive plan, and based on everything that was said here tonight.

Jesse Komatz: The variance is too great, town code 345-18a, and town code 345-23-e

Roll call vote:

Cirino Bruno – Yes

Richard Conroy- Yes

Jesse Komatz- Yes

Steve Morey – Yes

Dan Brey – Yes

Bob Yakin – Yes – I would like to add also that in addition to what was said, 345-23 e, requires signs be a subordinate part of the landscape

All in favor to deny application

Opposed-0

Agreed and carried

Steve Morey: BJ, would you please contact the applicant to make them aware of our decision.

BJ Gettel: I will

Motion for recess at 8:52 pm by Cirno Bruno, second by Richard Conroy

All in favor – 6

Opposed-0

Agreed and carried

Motion to reconvene back to regular meeting 9:00 pm by Dan Brey, second Robert Yakin

All in favor – 6

Opposed-0

Agreed and carried

- 2) Proposed application for an Area Variance to construct a new shul on a pre-existing non-conforming lot located at 86 West Shore Road, known as Bethel Tax Map#: 22-1-28, proposed by Khal Divri Chaim. (Wasson)***

Randy Wasson and Jacob Billig representing

Randy Wasson: We represent Khal Divri Chaim – to construct a new shul, on their 16 acre property which is located at the north end of White Lake. This is West Shore Road, (showing on map) the bungalow colony; the proposed shul is the mustard colored building on the plan. The application also

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includes extending the driveway, through the property, a few parking spaces by the shul, to connect to an existing driveway down below these buildings. This runs onto an adjoining piece that they also own which would be combined to their main piece, making it a total of 18.1 acres. We were before the Planning Board a few weeks ago, and we were directed to this board because this was considered an expansion of a preexisting nonconforming use. They are proposing to construct this shul, because basically they have outgrown their old shul. They are not adding any population, and the new building would be a modern structure, built on a concrete foundation. The zoning ordinance that we are in is a violation or disagreement of Section 345-36-paragraph b, which covers enlargements and extensions. I am going to read that now.

345-36 B "Enlargement or extensions. When an owner or tenant of a nonconforming use or structure proposes to expand or enlarge a nonconforming use, such application shall be processed as a special use. No enlargement or extension with the potential to worsen a nuisance condition or which would substantially increase nonconformity with setbacks or any of the performance criteria in this chapter shall be permitted. Likewise, no enlargement, extension or replacement shall be permitted that would increase building coverage above that permitted within the zoning district or which already exists."

We have a special use application. There is no nuisance condition on this site; this building is in an area that would not be seen by any of the neighboring properties. Rear property setback is about 145 ft; the minimum required is 25ft. There is no issue with the bulk requirements for this proposed construction. The last three words are the reason we are here. The building coverage permitted is 25%. I should say the existing building coverage on the 16 acre parcel without combing lots is 9.2%. By combining the two lots, building the new building, the lot coverage is actually reduced to 8.9%. We are not increasing lot coverage. The lot coverage will actually reduce. Our problem as I see it is the 3 last words of that paragraph which seem to contradict the previous portion of that sentence. It implies that we can with a nonconforming use, we can increase our lot coverage not to exceed 25%, but then it says an enlargement or extension, it says building coverage that already exists. What I am saying is, those things seem to conflict, they imply that you can increase your coverage up to the maximum percentage, but at the same time it says you can't create coverage. We are asking from the board for relief from those 3 words, we are asking for an area variance to allow us to build this building which will have less lot coverage as a percentage when we combine the other lot, then presently exists, and be less than the max allowed.

Steve Morey: Has the other lot been combined, or is it the intent to combine it

Randy Wasson: The intent is to combine it

BJ Gettel: They are not combined because there are taxes not paid. The County had a line item for the solid waste fee, once the solid waste fee has been paid, and then the tax assessor can combine both lots.

Steve Morey: The only delinquent amount on that second parcel is the solid waste fee of the tax portion?

BJ Gettel: The solid waste fee is on the main parcel. The second parcel, the 26.1 is classified as vacant

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land, but we can't combine the two until all of the taxes are paid

Jacob Billig: It is the same owner. Those 6 units when approved by the Planning Board, two of them crossed the property line. The line that they crossed is the same owner.

Cirino Bruno: The taxes you are talking about are sewer taxes?

BJ Gettel: Solid waste fees

Jacob Billig: When those are paid, the lots will be combined.

Cirino Bruno: Those properties pay real-estate tax?

Jacob Billig: Yes, everything there pays real-estate tax. This is all on the tax rolls

Jacqueline Ricciani: I was under the impression when those other 6 structures were approved, and crossed over the line at that point; the approval was given to add those 6 structures with the condition that the lots be approved, at that time. The fact that they were not ever combined because of tax reasons or whatever, I don't think that means that you can use that combination, that additional land to try to show that your building coverage is not going to be increased because had you combined those lots back when you got the original approval. Instead you should have been coming to us with an existing site plan for 18 acres, not 16, and then will throw in 2 more.

Randy Wasson: I don't believe that is correct Jacy. My understanding, my memory, we did the site plan approval; they were not across the line. They were parallel to the line. During the course of construction we built them across the line within the last couple of years

Jacob Billig: It was discovered after the fact

Jacqueline Ricciani: So in order to remedy that, when discovered, the lots would be combined. My point is, if not for this tax issue, the lots would have been combined a year ago, lets say, and you would be coming to us with 18 acres.

Jacob Billig: But that doesn't matter. It is the same owner of the two lots. So when considering the application, you can consider all of the owners land. The purpose is to combine those lots.

Jesse Komatz: What if he doesn't

Jacob Billig: He has to combine it, because two of the buildings are over the parcel line

Jacqueline Ricciani: If they were done properly, you wouldn't be talking about combining

Jacob Billig: I don't know that they were built improperly. I don't know the reason that they did cross

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the line. It was discovered after construction that they crossed the line

Steve Morey: There must be a plan for what was proposed to be built, and when they were going to be built which would say whether or not they are built improperly

Jacqueline Ricciani: They were built over the line

Randy Wasson: They were built over the line and it was only discovered when we put this plan together

Jacob Billig: It is the same owner of the property, both parcels

Richard Conroy: So they did not build them properly. You said this is a taxable property. It is section 8, totally exempt. They just have to pay the solid waste fees

Jacqueline Ricciani: Are you looking at the tax roles?

Richard Conroy: Yes

Jesse Komatz: Is there more than 1 shul there?

Jacob Billig: There is currently a shul that is attached to residential units

Richard Conroy: There are 2 shuls listed on the inventory that the assessor has. One is 5,652 square ft, the other 1,100 square ft.

Randy Wasson: I don't know which buildings they are talking about; there are some classroom buildings on the property

Richard Conroy: There are classroom buildings, there are apartments on the inventory, and there are two that are listed as churches.

Randy Wasson: There are some classroom buildings

Jacob Billig: Randy was this the map that was presented to the Planning Board when the last 6 units were approved?

Randy Wasson: Yes, it has been updated since they were constructed. It is the same basic plan

Jacob Billig: What was presented to the Planning Board only had one shul. Whatever documents were submitted to the Planning Board only shows one shul

Richard Conroy: Well the assessor has had it listed there for quite some time.

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Jacob Billig: Whatever documents that were shown to the Planning Board only show one shul.

Richard Conroy: So you are saying the assessor's inventory is not correct

Randy Wasson: They may be calling something a shul that might be a classroom. 1,100 square ft is not going to be a shul

Robert Yakin: This 1,100 square foot building is it currently being used by the shul?

Randy Wasson: yes

Bob Yakin: If you were successful with your request for a variance and you built the new shul, what would happen to the existing shul?

Randy Wasson: They would be classrooms

Bob Yakin: You know what I am getting at here, we are not increasing occupancy

Cirino Bruno: How many people does the existing shul hold?

Randy Wasson: I do not know. 550 maybe

Cirino Bruno: How many people will the new shul be able to hold?

Randy Wasson: Significantly more. The new shul will be 6,000 square feet. On the ground floor, and probably some of it will be class rooms, coat rooms, rest rooms, stair wells, 3 or 4,000 sq feet on the second floor.

Cirino Bruno: How many people? Are you talking about 1,100 people?

Randy Wasson: No, we have to subtract stairwells, coat rooms, etc. I don't have all of the details.

Jacob Billig: They are not increasing the residences. The buildings are what the buildings are. The community needs a bigger shul. I don't have the architect renderance either; I was recently hired a week ago, when they were told they had to come to this board. We will make available to this board, the architectural drawings.

Cirino Bruno: It currently holds 500. The new will hold 1,100, my understanding whether it is right or wrong, the question is will there be other communities attending?

Jacob Billig: There is no plan to expand the other residences.

Cirino Bruno: Why would you build something larger than you need?

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Jacob Billig: They are making larger common areas for use in the shul. It will also be a community type building. If there is a bar mitzvah, some religious service, they would now have a facility to do this. Your question is well pointed. That is why we are here tonight to understand what your issues are, so we can provide the information, and provide the architectural renderings. Basically the community has outgrown what is there, that 5,000 sq ft facility. This is why they designed something like this. We can provide the details to what you are referring to. There is no increase in the occupancy

Jacqueline Ricciani: The entire occupancy for the entire colony is 501. If you already have a shul that holds 500, and your occupancy is 501, Randy is shaking his head no

Randy Wasson: The shul by square footage numbers might hold 500 people. They don't put 500 in there, because they are not equipped to handle 500, because the men worship separately from the women. The current shul, they have separate services. The purpose of this shul is the upper level is for the women; the lower level is for the men. They can put them all in there at one time. If you go by a straight square footage number you can pack them in like sardines, but that isn't the reality.

Jacob Billig: For the orthodox, the men and women are separate.

Jacqueline Ricciani: The services are held at the same time, but the women are upstairs, and the men are downstairs

Randy Wasson: They will be held at the same time. Right now they are not. The current shul is not big enough and they don't have the separation.

Jacob Billig: We really should get you an architectural drawing. There may be some other common areas that are larger. Underscoring Randy's point, to try to interpret a statute, what the courts refer to as a plain meaning rule, which in layman's terms means common sense, when I was first hired by the client a week ago, I looked at section b, section b is Enlargement or extensions, you have a whole paragraph here that specifically says for nonconforming uses. Section A has to do with restoration or reconstruction.

Any nonconforming use or structure partially damaged by fire, casualty or act of God may be repaired and used as before, provided that the floor area of such use, building or structure shall not exceed the floor area or building volume which existed prior to such damage. All repairs shall be completed within two years after damages occur or such use shall not be rebuilt except as a conforming use. In the event that total destruction occurs or the Building Inspector orders said use or structure completely rebuilt, then the provisions set forth below shall apply.

Section c has to do with repairs of a nonconforming use. Section b deals with enlargements or extensions. If one was never allowed to enlarge or extend a nonconforming use, black and white, no you can't do it, then you wouldn't have section a or b, you can't do it. Each specifically goes through an analysis of when and how you can expand a nonconforming use. When you break all of that down, it talks about how you can increase the non conformity, the setbacks, etc. the last three words makes no sense in the paragraph, the paragraph should be interpreted that under the code you can expand a

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nonconforming use within certain parameters.

Steve Morey: I would like to agree with you. Essentially it says you can't exceed what already exists. It's in black and white

Jacob Billig: My emphasizing those 3 words, you can never expand a nonconforming use in the town. I am certain if I foil the town's records, I haven't been in front of this board in awhile, I'm sure you have expanded nonconforming uses.

Jacqueline Ricciani: Don't be so sure

Jacob Billig: Otherwise if you interpret you can't do it based on the last 3 words, why would it say ...why does it start by you can do it by special use permit. That it is for special use. Why does it say that you can't worsen a nuisance? You can do it as long as you don't worsen a nuisance. Or as long as you don't increase the setbacks. They give sir, a whole bunch of criteria, which I would say most statutes in New York and the towns, give to allow for the creation because most codes as this code finds; as long as you are not violating the general penance of the code you are not increasing any kind of nuisance, it isn't going to conflict with the conformity of the neighborhood, we are not increasing anything relevant to the neighborhood, the character of the neighborhood is going to be the same. We are not increasing the number of units.

Richard Conroy: My understanding is, of expanding the nonconforming use; I would only think we would only be talking about the exiting building. Not building a brand new nonconforming building.

Jacob Billig: We are not increasing the nonconforming use. What is the nonconforming use? The nonconforming use is in essence a summer bungalow colony. There are no new bungalow units; there are no new bungalow residences that are being presented here. That is the nonconforming use. The religious facility is not the nonconforming use. The residential units are no longer allowed, they are the nonconforming use. We are just looking to build a shul, you asked an appropriate question relative to the architectural characteristics, and we will provide that information to you. The nonconforming use under this code is the residential units of the colony. We are not increasing that in any way whatsoever. I would submit to you..

Cirino Bruno: Your client will verify that you are not building for any more residents?

Jesse Komatz: You are on West Shore Road. There are other bungalow colonies. You say there is no potential to nuisance. On a Saturday if you have a new shul there, you have other bungalow colonies that may use that shul are going to be walking down West Shore Road from the other bungalow colonies to go to that shul. That is something different; you are putting more people on that road. Am I correct?

Jacob Billig: I don't know if this particular Homeowners Association would allow non-residents to use their facility. I'm not sure of the first amendment implication to the question you are asking, because I am not a first amendment attorney, but I think the main point is I don't know that their HOA...

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Jesse Komatz: I am asking about people being on the roads because I know the Hasidic don't use cars on Saturday. It has nothing to do of how they practice or any of that, it has to do with; I know from living in this area that in the summertime the roads get very congested. That is the reason for my question.

Jacob Billig: I don't know if the HOA would allow non-residents. Whether they walk 10 miles or 1 mile to use it because they are not a member of the HOA, they are not paying dues, so I think we have to answer that particular question

Jacqueline Ricciani: Can you provide the regulations for the HOA. We don't need all of the rules and regulations, just whatever pertains to this.

Jacob Billig: You are entitled to that, yes

Richard Conroy: I don't think we have enough information for a public hearing.

Steve Morey: Is there a density issue on this property? A number of potential occupants?

BJ Gettel: Density is not based on occupants. It is based on buildings. Because they are with the municipal sewer, they are entitled to 4 units per acre. I believe, and Randy you will have to correct me if I am wrong, they have approximately 90 to 100 dwelling units on 18 acres. Density wise they are at capacity.

Cirino Bruno: What happens with the proposed construction?

BJ Gettel: It is not calculated as a dwelling unit. Their dwelling units are at capacity. This is not considered a dwelling unit

Jacqueline Ricciani: On the plan to the right of the proposed shul is, it says it is a day camp and a couple of structures there? Where do the campers come from?

Randy Wasson: They call it a day camp; those are the classroom buildings I referred to. It is not a day camp.

Jacqueline Ricciani: It's not really a day camp. Is it for the residents?

Randy Wasson: As far as I know

Richard Conroy: They have an office, warehouse, 3 schools, and a recreation center

Steve Morey: The upper right hand corner of the site plan, there is a building that is not marked with any notation at all.

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Randy Wasson: That is a new house. They were permitted to construct 6 buildings down here. It might be a Rabbi's house

Jacqueline Ricciani: Is that single family

Jacob Billig: We will also provide an explanation to the question of the 2 shuls that is listed on the assessor's document. We would want to know what the boards plan is. We would like a public hearing after SEQRA. We would like to submit a short form on this

Steve Morey: SEQRQ is already done.

Jacqueline Ricciani: The only thing I would point out to you as far as the EAF, is that the description is for both the construction of the new shul, and the area variance. I don't know if you might want to break it out, they are addressing separate things. I will leave it up to you

Jacob Billig: We don't want to segment. They should be on the same form, as you are probably aware the new short form is fairly detailed, it is like the old long form.

Jacqueline Ricciani: There are lines to explain.

Jacob Billig: We will look to supplement by answering the questions that you asked in terms of additional documentation. When the board is ready to complete SEQRA, then we can have a public hearing. Code Enforcement Officer, you did not render an interpretation on this? Does the code specifically list the interpretation of the zoning code go to the ZBA?

Jacqueline Ricciani: I'm not sure what you are getting at.

Jacob Billig: I will read the code. That is my lack of preparation, I apologize for that.

Steve Morey: What we are proposing is that you are going to review this issues and questions that came up and represent this at our next scheduled meeting.

Jacob Billig: Yes. We will supplement our SEQRA document so that you could in the process complete SEQRA with the information.

BJ: Normally our meetings are the 3rd Monday of the month, but because of the holiday, the next meeting will be the following Monday, February 24th

3) Set Application Interview Date

Steve Morey: We have two responses for the alternate vacant position.

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Motion to interview two applicants on February 24th by Richard Conroy, second by Jesse Komatz

All in favor – 6

Opposed-0

Agreed and carried

BJ Gettel: On February 4th – Basic Planning and Zoning class- 4 hours of continuing education. This will begin at 5 pm. Please contact Heather Jacksy to reserve a seat. There is another one February 22nd this is a class for 6 hours – DEC Flood Management at the Woodbourne Fire Department.

Steve Morey: Didn't we discuss hourly trainings before the meetings?

BJ Gettel: The County has informed me they have nothing available at this time

Steve Morey: Dawn, do you have anything to add to our meeting?

Dawn Ryder: Good job tonight

Motion to adjourn by Richard Conroy, second by Bob Yakin

All in favor – 6

Opposed-0

Agreed and carried

9:40 pm

Respectively submitted,

Gannetta MacArthur
Recording Secretary