

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 May 21, 2012. The meeting was held at the Duggan School, 3460 State Route 55, Kauneonga Lake, at 7:30 PM.

In attendance: Stephen Morey, Chairman, Jim Crowley, Vice Chairman, Richard Conroy, Jesse Komatz, Robert Yakin, Daniel Brey, Cirino Bruno, Alternate, Jacqueline Ricianni, Attorney, BJ Gettel, Code Enforcement Officer, and Jannetta MacArthur, Recording Secretary. Robert Brown, and Councilwoman Denise Frangipagne – excused. Seating Cirino Bruno as the alternate. Also in attendance: Daniel Sturm, Supervisor, Daniel Gettel, Planning Board Chairman.

Pledge to the flag.

Motion to approve the April 16, 2012 minutes by Richard Conroy, second by Jim Crowley

All in favor – 7

Opposed – 0

Agreed and carried

- 1) Application for an Area Variance for height, located at 1623 State Route 17B, known as Bethel Tax Map # 33-5-2.1, proposed by White Lake Mansion, LLC. (Passero)***

Motion to go into public hearing by Jim Crowley, second by Richard Conroy

All in favor – 7

Opposed-0

Agreed and carried

Jess Sudol: From Passero Associates. We are the engineer and architect for the White Lake Mansion project. You will see me on behalf of White Lake Mansion, LLC. We are here requesting a height variance for one of the buildings for the White Lake Mansion project. The building we are requesting a variance for is actually bldg B, (showing on map) in the southeast corner. Some of you may recall as I stated last month, this project does have a little bit of history with area variances. Back in 2010, there were several height variances that were granted to the project. There was also a variance granted on parking. Two of those height variances that were granted several years ago still apply to the project. One would be for the White Lake Mansion building, which is the building out there in the front, and the second would be for building A, which is the building back here, which is in the southwest corner, the height variance granted for the mansion building was approximately 68 ft, and the variance granted for building A was 58 ft. The variance we are requesting this evening is for building B, it is also 58ft. The reason for the variance is we are actually building two buildings that are essentially exactly the same. Without getting too much into the use of each building, they are exactly the same. The 1st 2nd and 3rd floors will have suite rooms. Each floor will have 12 rooms, for a total of 72 units, which is down from 81, which was in the application that was presented a couple of years ago. Then in building A, the first floor will be a parking garage, and then in building B, the 1st floor will be a spa. Building B is positioned toward the back of the property. Anyone that is familiar with it actually knows that there is a

Town of Bethel
Zoning Board of Appeals

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

hill that goes up to the back there pretty significantly. The building will actually be cut into that hill, about 15ft, with a retaining wall that you can actually see there behind the building. One of the reasons that is important to use, because by cutting into the grade, and by forming to the natural topography of the land, we are able to screen ourselves pretty well. Certainly more than the Mansion building which is out front. Also, if you look up at the top of the hill that goes up to the water tower there is some significant vegetation that exists today, which we will not be removing. You are not going to be able to see building B, other than basically when you are on site or you can get a glimpse of it when you are driving down 17B. That is important to us, because we know when we do our variances; we try not to have a detrimental impact on the community, or the character of the community, or any of our neighbors. We feel that we have done the best job that we can to keep that building back there. One of the things that contributes to the height which is defined as the average building to the top part of the peak of the roof, it doesn't include those 2 little cupolas there, one of the reasons why we ended up with the 58 ft, we are essentially trying to match the White Lake Mansion building, and character, the slope and style. We could have gone with a 50 ft variance instead of 58 ft variance if we put a flat roof on the building, but quite frankly it wouldn't meet the historical nature of the property that we trying to maintain. Again, speaking in the past, part of the project does propose taking down the existing Mansion building, and building a replica of it, so we are not keeping the building that is there, what you see is as close as we could come, an exact replica, basically many people in the past, including ourselves, looked at rehabilitation for the existing building but it was just not feasible, so we are doing the next best thing in our opinion which is constructing an exact replica. One of the other options might have been instead of doing 2 - 50 ft buildings, to do 4 buildings half the size. That would eat up all the land on the parcel, and that wouldn't allow us to have a lot of green space. That impacts everything from stormwater management, to landscaping, and things like that. We feel that we have done a good job. Three new buildings, maintaining as much green space that we can. We made an effort to design the building to conform to some of the variances that were previously granted. Our client is aggressively moving this project forward. We are currently working with the Planning Board. I am going though the site plan approval process and the SEQRA process on their end. We hope to start sometime in the early fall of 2012 pending again the approval process of the Planning Board, this board, and also we have a sanitary sewer district petition with the Town Board. We are working on all of these things, and we have been making pretty good strides to keep moving it forward. That is it in a nutshell. I would be happy to answer any questions

Steve Morey: While we are in the public hearing, anything from the board? Jacy? Anyone from the audience?

No one

Motion to close public hearing by Jim Crowley, second by Richard Conroy

All in favor – 7

Opposed – 0

Agreed and carried

Jacqueline Ricciani: Mr. Chairman, I want to confirm that the receipts for the mailing have been turned over

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

BJ Gettel: Yes, they have. The County 239 came back, they will have no adverse intercommunity impacts, and therefore this matter is under local determination. New York State DOT – 239 comments - reading – please note that a highway work permit must be obtained from our department prior to commencement of any work in the state right of way. He anticipates that comments regarding traffic, drainage and other issues prior to site plan review, plan application, traffic impact study, outside of that, local determination. They have no other comments

Steve Morey: Thank you. Anyone? There are some things mentioned at our last meeting that I'm still not sure about. A statement was made by you Jess, in your original presentation, your statement was "there were several area variances for a similar project on the same site granted back in May 2010" The variances were actually granted specifically to the buildings on that particular plan, this plan is a slight modification. That is one of the questions that left me somewhat uncomfortable from our last meeting, regarding the Mansion House. Is it actually on the same footprint as the original plan? The plan that we did do the approval for?

Jess Sudol: Yes

Steve Morey: So is building A?

Jess Sudol: Yes.

Steve Morey: And building B, is actually taking the place of four other buildings that were originally granted variances.

Jess Sudol: Exactly

Steve Morey: Does anyone from the board have anything else?

No one

Steve Morey: This is also later on during the meeting, the phrase here is, "some of the things we talked about", I guess there were things you folks were looking at, and you wanted to make sure you were prepared for the upcoming meeting or meetings. Some of the things we talked about, these buildings are positioned further back on the site. That is what kind of throws me about the footprint of the Mansion House and building A being on the same footprint of the original plan that was granted variances in 2010.

Jess Sudol: I think what I was basically saying, with respect to the Mansion building; the two other hotel buildings were slightly back. Not necessarily compared to the original approval.

Steve Morey: Okay. Thank you. Anyone else have anything?

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

BJ Gettel: Reading SEQRA

- A. No
- B. No we talked about that before with coordinated reviews with the County and State
- C. 1. No
- 2. No
- 3. No
- 4. No
- 5. No
- 6. No
- 7. No
- D. No
- E. No

Motion for negative declaration by Richard Conroy, second by Jesse Komatz

All in favor- 7

Opposed –0

Agreed and carried

Steve Morey: Is there an assurance that this won't change again before it is constructed?

Jess Sudol: No there is no formal assurance, other than; I can tell you that our client has taken this to the next level. Our office is in the process of doing detailed design plans, architectural design plans, which the client is spending a lot of money on to move this project forward. Everything from the traffic studies, drainage, so that everyone is comfortable with it. I think we are at a point where everyone is comfortable with it; he has what he needs to make the project work. We have a site and building design that everyone is happy with.

Steve Morey: Jacy, anything else?

Jacqueline Ricciani: Are you ready to do the criteria?

Steve Morey: We will do the test for an area variance. Reading

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:

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

- 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;

Applicant's response: The proposed building is positioned towards the rear of the lot and built into an existing slope. The building is far enough back from 17B that it will not impact the line of sight from the neighbors to the east. Additionally, the maximum height of the building's roofline will be below the top of the hill to the southeast of the property. The hill will effectively screen the building from any properties to the south and east.

Steve Morey: Yes, the response by the applicant covers that more in terms of site and view. Changing the character of the neighborhood, I don't know the history, but the White Lake Mansion was an old time hotel type situation essentially on this property they are doing the same thing, but in current times.

Richard Conroy: You have the Bradstan there, which is a hotel type property, which is right down the street.

Steve Morey: What is the existing White Lake Mansion building now?

BJ Gettel: It exceeds 35ft.

- 2) the benefit to the applicant can be achieved in some other way;

Applicant's response: building with a large footprint that could support the required number of suites. The site drops approximately 50 feet in grade from east to west. A large short building would require a footprint that encompasses the entire site. In order to construct that type of building cuts and fills in excess of 25 feet would be required. The sitework associated with that type of undertaking is not feasible and could cause a detrimental impact on the surrounding lands.

Steve Morey: I can't come up with anything else. I am content with that answer

Richard Conroy: They consolidated their building; they are taking up a smaller footprint

Jesse Komatz: No, for reasons as sited in the applicant's letter

- 3) the required area variance is substantial;

Applicant's response Building "B" will be the same as Building "A" which is permitted based on the previous variances. As stated above the nature of the hill at the southeastern portion of the project will screen the building.

Jacqueline Ricciani: I would like to point out to the board if I could, when you are considering whether the requested variance is substantial or not, you need to measure it against what the requirement is. The requirement is 35 ft, they are asking for 58 ft. Therefore the variance they are requesting is 23 ft. That is

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

something you need to take into account as a whole.

Steve Morey: The applicant does make the statement it is not substantial based on previous variances, but it is substantial according to our code

Richard Conroy: I think so too.

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

Applicant response: The building and associated height variance are proposed based on a site and project layout that reduces the impact to the environment when compared to previously submitted designs. By making the building taller, the building footprint required to support the project and associated impervious cover is reduced. A reduction in impervious cover improves the stormwater conditions as there is less runoff and more green space.

Richard Conroy: I feel that is a good answer. You are taking up less space

Steve Morey: I think the applicant's response is somewhat tied into previously granted variances

Jim Conroy: This plan definitely has more green space than the plans before

Steve Morey: We are not comparing plans for granting the variances, we are comparing to our code. I agree, I don't think it will have an adverse effect or impact. I don't think we can specifically settle on an answer that is compared to a previous plan

Jacqueline Ricciani: You're right, but it is also okay to look at the history of this project, and what actions this board has taken in the past, and it is pretty much the same board

Steve Morey: Yes, I think we have the same sentiment, about the project itself, and the variances. I'm not satisfied resting upon the applicants answer solely, for our answer to that question

Jacqueline Ricciani: So your additional response to that criteria includes, do you know what the bulk requirements are?

Jess Sudol: The maximum building coverage is 35%. We are proposing 17%.

Steve Morey: The history of that property has already established itself for this type of development, the district being the 17B corridor, code is set up for this type of development, and I would add that as part of the response to that question if everyone is comfortable. Our answer is also no

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

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

Applicant's response: The difficulty is self-created in that the applicant is proposing Building "B" to match Building "A" which requires the variance. However, the physical characteristics of the site including the parcel shape and topography which have lead to the need for the variance are not self created.

Richard Conroy: It is self created; they bought the property knowing what the zoning was

Steve Morey: I happen to agree. Is everyone comfortable? That is the first time that letter has been submitted

Motion to receive letter from Passero Associates by Richard Conroy, second by Cirino Bruno

All in favor-7

Opposed-0

Agreed and carried

Bob Yakin: I would like to make a statement. As I am employed as building material salesman, my company has assigned this project to me as sales representative should it move forward to the construction phase. Therefore, since I am paid on a commission basis, and if I am successful selling products to this project, it would result in a significant earnings increase for me; there constitutes a direct conflict of interest for me to take part in any voting for this project. I have not taken part in any discussion or in the public hearing because of this.

Steve Morey: Our next step is we can either postpone making a motion on this for further deliberation or make a motion to approve

Motion to approve area variance by Jim Crowley, second by Jesse Komatz

Roll call Vote:

Jim Crowley: Yes

Dan Brey: Yes

Steve Morey: Yes

Jesse Komatz: Yes

Richard Conroy: Yes

Cirino Bruno: Yes

Robert Yakin: Abstain

All in favor – 6

Abstain – 1

Agreed and carried

Town of Bethel
Zoning Board of Appeals
PO Box 300, 3454 Route 55
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BJ Gettel: With regards to training, if anyone has attended a class in the last month or two, and I do not have your certificate, would you please let me know if and what you attended and where?

Bob Yakin: Do you have mine for SEQRA

BJ Gettel: No

Steve Morey: Is there anything that can be done online from home? My schedule doesn't permit evening trainings.

Motion to adjourn by Jim Crowley second by Dan Brey

All in favor – 7

Opposed –0

Agreed and carried

8:10 pm

Respectively submitted,

Jannetta MacArthur

Recording Secretary