



Town of Bethel
Zoning Board of Appeals

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

A Work Session was held on March 19, 2018 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 was the following:

In attendance Steve Morey, Chairman, Jim Crowley, Vice Chairman, Richard Conroy, Jesse Komatz, Cirino Bruno, Jim Ahearn, Alternate, Bette Jean Gettel, Code Enforcement Officer, and Jacqueline Ricciani, Attorney. Also in attendance, Dawn Ryder, Liaison.

Pledge to the flag

Excused Dan Brey, and Jannetta MacArthur, Recording Secretary.

Seating Jim Ahearn, Alternate.

Motion to approve minutes from the February 2018 meeting by Cirino Bruno, second by Richard Conroy.

All in favor -6

Opposed-0

Agreed and carried

1) Public Hearing for an Area Variance for a conversion to a summer camp to be located at 347 Old White Lake Turnpike, known as Bethel Tax Map #: 13-1-12.1 & 14-1-2.10, proposed by David Weiss.

Jay Zieger: Attorney presenting on behalf of the applicant.

Jay Zieger: This is the site as it now it exists. All of these buildings are existing, and the property now ends over here. (Showing on map) It's been operated as a hotel forever, and it is still operating as a hotel. The property owner, what you are looking at is this (showing on map) only on a smaller scale. The property owner has purchased this piece over here, which is approximately 11 acres. The proposal is to convert the property to a summer camp. There is no proposal to build any additional buildings. The existing buildings will be converted to a use consistent with a summer camp. Because all the buildings are existing, under the current zoning there is a whole bunch of variances that will be required and they are spelled out on the map and in the notice that was sent. As a hotel, we would need most of or all of these same variances. The reason why they continued to operate as a hotel without variances is because they were operating as a hotel before the town required the setbacks. So it continued to operate as a hotel as a preexisting nonconforming use. The proposal is to convert it to a summer camp, since it is a different use, even though the buildings are in exactly the same place it triggers the use variances. It



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is a different use, it is not necessarily more people, but per the zoning code, whenever you change the use of the property you need.....

Jacqueline Ricciani: A hotel under the code can be operated twelve months a year and it is for transient stays with people coming and going, and having their activities. A summer camp under the code is generally only operated in the summer months and it is exclusively for children, it is not for families, it is for the children to come and spend the summer. They are usually done in two to four week sessions, or six weeks or whatever, only during the summer months.

Someone in the audience: Basically they were doing that now with the hotel, without variances.

Jacqueline Ricciani: I can't say what they have been doing.

Someone in the audience: We know, we live there. The town doesn't know what they are doing.

Jacqueline Ricciani: That is not the issue before this board.

Someone in the audience: The last couple of years, the first year.....

Steve Morey: If you have statements to make, when we go into public hearing then you are certainly welcome to speak.

Jay Zieger: Can I continue my summary of the project.

Steve Morey: Just to clarify, we were discussing in our work session... I believe that the structures involved, are the #12 structure, in may include the pool, maybe it is more than that, and the actual number of variances that are being requested right now are?

Jay Zieger: It is eleven structures, including the pool. The total is 19. I just did a quick count.

Steve Morey: Okay, I just wanted to clarify that.

Jacqueline Ricciani: If I could just ask one thing, Mr. Zieger indicated that there are not going to be any new.... there is no plan to put any new buildings in, but according the site plan, building #13 which is near the road and kind of in the middle, it says to be removed. It seems that one building will be removed and nothing new added.

Jay Zieger: There is no plan to build anything. Jacy, on the occupancy schedule it was building #13 to be removed.



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Jacqueline Ricciani: We don't know that it had occupants prior. What was it used for?

Bette Jean Gettel: The family used that as their residence in the summer time.

Steve Morey: Anything else from the board?

Nothing.

Motion to go into public hearing for the purpose of this application by Jim Crowley, second by Cirino Bruno.

All in favor – 6

Opposed-0

Agreed and carried

Steve Morey: Now folks if you have statements or comments you would like to make, I would appreciate if you come up to the microphone to speak.

Ron Roser- 42 Butrick Road- I live around the corner. Our main concern is for the last couple of years, the first year they started a summer camp, hotel, whatever you want to call it. There is a leech field down below. The first year the leech field was full, it run out the back of the leech bed. Raw sewage. My wife called the Town; we have raw sewage here running out the leech beds, running down through the woods. The response we got was, yes, we know, but they aren't supposed to be there. That was the response we got. The second season, it was full, not as full as the first season. That is our concern. It is an old hotel built in the '30's, and before anyone else had, there were a lot of elderly people, very few people, my concern is if they are going to turn it into a camp, and incorporate more people, which I assume which is going to happen, there is a sewer.

Steve Morey: Our purpose here is for the area variances that they are requesting. Front yard, side yard.

Jay Zieger: I think the answer is, assuming we get our variances, and our next stop is the Planning Board, to operate as a summer camp they are going to need to get approval from the State Health Department, and one of the items they are going look at will be the septic. This situation they are going to have to address, because they will have to get approval from the Health Department.

Ron Roser: So that wouldn't be decided until after the Planning Board?

Jay Zieger: Correct. We need a Planning Board resolution granting preliminary site plan approval and then we would be able to go to the Health Department and demonstrate that as a summer camp we would have adequate septic, adequate sewage and water.



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Ron Roser: That was my only concern. Thank you.

Steve Morey: Thank you. Anyone else have any comments?

No one

Steve Morey: All of the certified mailings have been returned?

Bette Jean Gettel: Yes.

Steve Morey: And we have no correspondences mailed in?

Bette Jean Gettel: No emails, no letters or correspondence. No written comments.

Steve Morey: Okay. Anything from the board?

No one

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

All in favor – 6

Opposed-0

Agreed and carried.

Steve Morey: We have SEQRA review on this project. I am not certain if that should be done first or before

Jacqueline Ricciani: Right because if there is an environmental impact that would be something you would take into account with the criteria.

Jay Zieger: At some point during the process I want to go over the variance criteria and why I believe we meet those criteria. I don't know when you would like to do that, now or later....

Steve Morey If you think it impacts our review, perhaps now, otherwise after we do the SEQRA review? I will leave it to your choice.

Jay Zieger: I guess we could do it now. If this were a vacant parcel of land and I walked in here and said this is what I want to build, and these are the variances that I need in order to build it. I would not expect a favorable reaction because I would argue I would not disagree, that the variances are substantial. In this instance because everything here is existing, we can operate this as a hotel forever without getting any variances, this situation is much different, we are not building anything new, we are



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not creating any new situations. If we came in here as a hotel that was not operating already, not a preexisting nonconforming use, and I said I want to convert this to a hotel, most of not, if not all of these variances, in fact if you look on the uses in the code, to convert to any of those uses, we would need a whole bunch of variances, probably very similar. So in the context that the buildings are already there, we are not adding any buildings, we are not changing what is already there, I can submit that it is substantial under that context that exists no matter what the uses that this property would be. By denying a variance here you are forcing the continued use of a hotel, and if someone is not making any money as a hotel, and they decide to close down after a period of time we are going to be left with a property that is a whole bunch of buildings and no allowable use. So under that context I submit that all of your criteria if a variance is requested although many in the context of their existing buildings they are not substantial because they would be needed for any of your other permitted uses. In terms of the character of the neighborhood, again we have an existing hotel, I don't think that a summer camp necessarily changes the character of the neighborhood it is still going to be a use that is going to have people in and out and is going to be occupied. Environmental conditions since we are not building anything different and we are not adding to the number of buildings, we are not adding to a variance that you would need anyway, I don't think there is any adverse environmental conditions that are going to happen because of the change in use. In terms of the variance being self-created, again the property because everything is there, already exists, so I submit that this is not a self-created variance because any of the uses as a hotel would need some more variances.

Steve Morey: Okay, any questions anybody?

None

Steve Morey: Okay, thank you.

Jay Zieger: Thank you.

Steve Morey: SEQRA Review

Bette Jean Gettel: Answer all the following questions in Part 2 using the information contained in Part 1.

1. *Will the proposed action create a material conflict with an adopted land use plan or zoning regulation?*

No.

2. *Will the proposed action result in a change in the use or intensity of use of land?*



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Steve Morey: That was one of my questions. We have occupancy numbers here on this plan? How does that compare to the occupancy currently used as a hotel?

Jay Zieger: 422 beds.

Steve Morey: I don't know if there is an average rule of thumb for that number of beds. What does that equate to in occupancy?

Jay Zieger: 422 beds as a hotel, the proposal is 197. There are two beds in each room.

Bette Jean Gettel: Reading question again....

2. Will the proposed action result in a change in the use or intensity of use of land?

Jim Crowley: Yes, it should go down.

Jacqueline Ricciani: Your choices are either no or minimal impact from the change or....

Bette Jean Gettel: Moderate or large impact may occur.

Jacqueline Ricciani: Once you start going down the moderate to large road, you are potentially looking at a full impact statement

Cirino Bruno: It is not a negative moderate to large; it is a positive moderate to large.

Bette Jean Gettel: The choices are no, or small impact may occur, choice #2 is moderate to large impact will occur.

Board consensus – No. They are not going to build any more buildings.

3. Will the proposed action impair the character or quality of the existing community?

No.

4. Will the proposed action have an impact on the environmental characteristics that cause the establishment of a critical environmental area?

We don't have any critical environmental areas in Bethel.



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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 fail to incorporate reasonable available energy conservation or renewable energy opportunities?*

No.

7. *Will the proposed action impact existing,*

a. *Public/private water supplies?* No.

b. *Public/ private waste water treatment utilities?* No

8. *Will the proposed action impair the character or quality of important historical archeological architectural or aesthetic resources?*

No.

9. *Will the proposed action result in adverse change to natural resources?*

i.e.: wetlands, waterbodies, ground water, air quality, flora or fauna? No

10. *Will the proposed action result in the increase of the potential for erosion, flooding, or drainage problem?* No

11. *Will the proposed action create a hazard to environmental resources or human health?*

No.

Based on your answers motion to declare a negative declaration?

Motion to declare negative declaration by Jim Crowley, second by Richard Conroy.

Roll call vote:

Jesse Komatz: Yes

Jim Crowley: Yes



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Richard Conroy: Yes

Jim Ahearn: Yes

Cirino Bruno Yes

Steve Morey: Yes

Motion passed

Steve Morey: Okay, what is the pleasure of the board at this time? To do our criteria for each and every individual variance, or each individual building, or possibly take one or two of the highest impact variances and proceed from there.

Richard Conroy: I think we should look at the ones that need the biggest variances which looks like the pool and building #12, and since everything else needs less of a variance, if these two pass, that should cover everything.

Jim Crowley: I agree.

Cirino Bruno: I agree.

Steve Morey: Is everybody comfortable with that?

Board – Yes

Steve Morey: Let's start with the pool.

The pool – there are two area variances requests concerning the pool. One being the front yard setback, what is required is 200 ft., what exists is 20 ft. They are requesting a 180 ft. variance. The portion of that is the side yard setback which 150 ft. is required, what exists is 5 ft. Therefore 145 ft. variance is being requested. With that in mind, our criteria has five portions to it.

- 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.*

Richard Conroy: I don't think so. There are bungalow colonies and camps all along that road. It certainly isn't going to change.

Steve Morey: Does anyone have any other thoughts?

Jacqueline Ricciani: What you are talking about is having the pool in that location. If you grant the variance so the pool is there, is that going to be the undesirable change?



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Jim Crowley: No, the pool is already preexisting. It's there. It's not going anywhere. It probably predates zoning altogether.

Richard Conroy: I would say that there are probably pools in every bungalow colony there.

Steve Morey: A question to the applicant, is that pool completely fenced?

Bette Jean Gettel: It has to be.... Yes it is.

Steve Morey: I would tend to agree with what has been said. Anyone else?

No one else responded

Steve Morey: Continuing reading criteria..

2. The benefit to the applicant can be achieved in some other way?

This is for the purpose of the area variance, not the purpose of the use change.

Jim Crowley: No he can't. Those buildings are already there. And he did buy that piece of property to satisfy a number of other variances as far as setbacks. I don't see how he is going to get to where he wants to go unless he knocks buildings down, which isn't going to happen.

Jacqueline Ricciani: This is the pool.

Jim Crowley: It's the whole thing right?

Jacqueline Ricciani: Right now you are just doing the pool.

Jim Crowley: We are taking the two items..... or are we just picking the pool?

Steve Morey: I think we are using these two items as samples to the conditions for the whole project. These are the worst case scenarios on the project as a whole. Am I correct with that?

Jacqueline Ricciani: If you are going to consider these two individual structures, go through the criteria, have your discussion, and then with respect with the remaining structures, if you find that the same rationale that applied for these two, also applies to the others, then you can just kind of do in a kind of a summary way.



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Can the pool come into compliance in another way other than the variances?

Jim Crowley: No, you would have to demo the pool. Or move it. But that's not feasible.

Steve Morey: Continuing to read criteria.

3. The required area variance is substantial?

Jim Crowley: It is substantial; again that is where the pool is. It isn't going anywhere. It is substantial as the zoning of today, it probably wasn't substantial or around when that pool was built back in the day.

Jay Zieger: I will let Jacy confirm, or not confirm....substantial under the definition for a zoning variance is generally not based on a mathematical formula, and that substantial in this instance it is substantial mathematically but the courts response to substantial is really kind of in the eyes of the beholder, does it have a substantial impact? That is really where they look. A classic case was a town had a height ordinance of 35ft, somebody wanted to put up a flag pole of 150 ft, and mathematically everybody agreed that was a substantial variance from 35 to 150, but the impact was it simply was a flag pole with a flag on it and the court said that isn't substantial. Over here mathematically I would agree that it is substantial, I said that earlier, but the impact of the site and granting the variance I submit it is not substantial since the pool was already there, and by granting the variance you are not substantially changing anything or impacting anything.

Jacqueline Ricciani: Whether something is substantial or not is not the sole basis to decide whether to grant or deny that is just one factor you take into account. What I do agree with what Mr. Zieger just explained with the example with the flag pole, although the height requirement may have been substantial when you take into account all of the criteria, the end result may be to grant the variance because it doesn't have a substantial or detrimental impact. I think what Mr. Zieger was just conveying to you individually is it may be substantial mathematically, but after you reviewed the criteria and you look at the whole project it may not be so. If that makes sense. It is just one out of five.

Cirino Bruno: Given the nature of this entire project, I don't see it to be substantial.

Steve Morey: Does anyone else have any other thoughts?

Richard Conroy: I would say it is substantial but I don't think it is going to impact the project.

Steve Morey: I agree with both of you, but in this particular example, mathematically it is substantial. Taken as the whole of the project, I don't know if I would be concerned and as Jacy said, saying yes it is substantial doesn't necessarily mean we cannot approve that variance. It is only one of the fiver criteria.



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Cirino Bruno: I would agree with that.

Steve Morey: Continuing to read criteria

4. *The proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district?*

No.

Jim Crowley: No, because the whole neighborhood is like that.

Jacqueline Ricciani: So the neighborhood has densely constructed bungalows and camps and whatnot.

Richard Conroy: All the properties on that road are similar to this one. I don't even know if there is a single family house that far down.

Steve Morey: Continuing with criteria

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

Richard Conroy: The buildings are there already, it's not like they want to put up a building that is going to be a violation of zoning.

Bette Jean Gettel: It is preexisting, nonconforming.

Jacqueline Ricciani: If they get the variances, they get the summer camp, and then it will conform, so that would be good.

Steve Morey: The difficulty was self-created....

Jim Crowley: We've had zoning since the 1960's? I guarantee all these were built before then.

Steve Morey: So we are saying no for the reason Jim just gave us.

Jacqueline Ricciani: Because the buildings are preexisting.

Steve Morey: Let's move on to another building.



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Jacqueline Ricciani: I think you should discuss whether this variance would be granted.

Steve Morey: Discuss or move?

Jacqueline Ricciani: You want to do the other building and then do them together?

Steve Morey: That is what I was thinking. Just to review on the pool, we said it is not an undesirable change. The benefit cannot be achieved in some other way. We said it is substantial, we said it will not have an adverse impact; we said it was not self-created. Now moving on to building #12. Building #12 has a front yard setback variance request, front yard required is 200 ft., what exists is 33 ft.; therefore 167 ft. variance is being requested. The side yard required is 150 ft., what exists is 81 ft.; therefore 69ft variance is requested.

Reading criteria for building #12

1. *An undesirable change in the character of the neighborhood or a detriment to nearby properties will be produced by the granting of the variance*

No. It is the same. It is the same as the pool, and the rest of the neighborhood.

Richard Conroy: There are camps and bungalow colonies on that whole road.

2. *The benefit to the applicant can be achieved in some other way*

Steve Morey: No. Like the pool, the option to the applicant would be to move the building which is really not an option. Is everybody comfortable?

Board: Yes

3. *The required area variance is substantial*

Richard Conroy: Yes, it is substantial mathematically, but just like the pool, it's not going to have an impact.

4. *The proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district*

Jim Crowley: The whole neighborhood is like that.



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

Richard Conroy: No. The buildings have been there forever. They have been there predating zoning. They are not building anything new.

Steve Morey: Also remember number three of our checklist. The required area variance is substantial. For these examples which is requesting the largest variances mathematically, if you want to put it that way, I think as Cirino as mentioned, taking this project as a whole these two examples appear to be substantial, but if you take the project as a whole, the project itself I don't think you would call it substantial.

Jim Crowley: On a whole, you're right.

Steve Morey: If you want to compare mathematically, you would have to take each one, see what's required, total that column out, see what exists, total that column up and then actually do the comparison mathematically, and I think when that is done you are not going to find it substantial mathematically. Other than that I don't know if it is substantial in any other fashion because it exists. All these conditions exist. Does anyone want to take one of the other items, undesirable change in the character of the neighborhood or detriment to nearby properties will be produced by the granting of the variance? We are looking at this as a whole project, not just these two individuals.

Cirino Bruno: Looking at it as a whole project, for all the reasons stated, respectfully, the pool, and building #12, since these requested setbacks, for all of the reasons states, I feel they have no adverse effect, 1-5.

Steve Morey: Are you saying criteria 1-5?

Cirino Bruno: Yes.

Jim Crowley: I agree.

Jesse Komatz: I agree too. Maybe one or two maybe substantial.

Steve Morey: I think we picked out the two that were.

Motion to grant variance request as a whole for the project by Cirino Bruno, second by Jim Crowley.

Steve Morey: Can we hold off on that vote for a moment?



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Bette Jean Gettel: The one condition I have to add on is that all fees must be paid.

Steve Morey: We have other conditions.

Bette Jean Gettel: The lot combination.

Steve Morey: Yes, the lot combination. I still have trouble with that. We discussed that at our last meeting. There are eight area variance issues contingent upon that lot combination. If we are going forward with this meeting that does not.... with this process it does not even enter those eight into the conversation. I struggle a bit....

Cirino Bruno: I would say our rule this evening is going to encompass all, if those lots aren't merged, then they are back to square one. The whole project folds.

Jim Crowley: I agree.

Richard Conroy: If we approve these variances, the lots must be combined in order for them to take effect.

Steve Morey: Does that not need to be part of the motion to approve?

Cirino Bruno: I add that to the motion. If not, then what we are about to grant folds. Wasn't there another item?

Steve Morey: Yes, there was a numeric error possibly on the map.

Richard Conroy: That was corrected I believe.

Steve Morey: I don't know if that was corrected.

Bette Jean Gettel: Randy was going to correct that on the map when he comes back from vacation. The agenda is correct.

Richard Conroy: The other thing we discussed was the 25ft from the centerline.

Jacqueline Ricciani: That was established last time.

Cirino Bruno: Were we relying on the information that the purchased lot, there would be no building on that?



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Jay Zieger: That is correct.

Steve Morey: Do we need to make that a condition?

Jacqueline Ricciani: Do you want that to be a condition that there will be no new construction on the new lot?

Richard Conroy: I don't know if you want to add that as a condition.

Bette Jean Gettel: There is a single dwelling on that lot.

Jacqueline Ricciani: This project is next going to the Planning Board, so I would suggest if you want to include something like that as a condition you might consider when the Planning Board takes a look at this..... maybe not confine them....summer camps are permitted in this district. If you do it.....

Jim Crowley: I don't think it is our thing to do. It is the Planning Board.

Cirino Bruno: We have been struggling with density, side yards and set backs are substantial. All we are looking to do.... looking to take advantage of the fact that the applicant has submitted that they will put no additional structures on and create no more density.

Jacqueline Ricciani: That is 11 acres. It is a lot of land.

Cirino Bruno: So, do you represent the applicant?

Jacqueline Ricciani: No, but I think that if the Zoning Board wants to put a restriction on a project that is next going to the Planning Board, I think you need to give the Planning Board the option to take a look at that and not restrict the Planning Board.

Cirino Bruno: I respectfully disagree.

Jacqueline Ricciani: It is up to this board.

Jay Zieger: We have no plans currently to do anything. What will happen in the future we don't know. I would rather not be tied down, if we are going to do something that creates a variance, we have to come back anyway.

Jacqueline Ricciani: If they want to put a new building back there as part of their Planning Board application, it is going to have to meet the setback requirements or else they are right back here.



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Richard Conroy: So there really is no need to put that restriction on them. They can't do anything without a permit or if they need a variance they need to come back.

Cirino Bruno: I withdraw my motion.

Motion to approve the application with combining the two lots into one, and the fees be paid, by Jim Crowley, second by Richard Conroy.

Roll call vote:

Jesse Komatz: Yes

Jim Crowley: Yes

Richard Conroy: Yes

Jim Ahearn: Yes

Cirino Bruno Yes

Steve Morey: Yes

Motion passed

Jay Zieger: Thank you very much.

Steve Morey: Good luck!

Motion to adjourn by Richard Conroy, second by Jim Crowley

All in favor – 6

Opposed-0

Agreed and carried.

Respectively submitted,

Jannetta MacArthur

Recording Secretary