



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 July 18, 2016. The meeting was held at the Duggan School, 3460 State Route 55, Kauneonga Lake, at 7:30 PM. On the agenda at this time were the following:

In attendance Steve Morey, Chairman, Richard Conroy, Dan Brey, Victor Kask, Jim Ahearn, Alternate, Bette Jean Gettel, Code Enforcement Officer, and Jacqueline Ricciani, Attorney. Also in attendance, Dawn Ryder, Liaison, and Lillian Hendrickson, Town Board member.

Pledge to the flag

Excused Jim Crowley, Cirino Bruno, Jesse Komatz, and Jannetta MacArthur, Recording Secretary.

Seating Jim Ahearn, Alternate.

Motion to accept minutes from the May 16, 2016 meeting by Richard Conroy, second by Victor Kask

All in favor – 5

Opposed-0

Agreed and carried

Steve Morey: We did have two agenda items, one has been withdrawn.

1) Application for a Use Variance for Day Care Center to be located on Creamery Rd (Rt 17B side), known as Bethel Tax Map #: 38-2-30.23, proposed by James Cutroni.

Steve Morey: Mr. Cutroni, if you would like to come up, and explain the plan.

James Cutroni: It's a daycare on Creamery Road, if you know where the old Ray's market was. It was a hair salon before that.

Jacqueline Ricciani: It's on 17B, by Gayle Road, the vacant building.

Steve Morey: So you are off 17B.

James Cutroni: On Creamery Road, a little less than a quarter of a mile off 17B. The lot is 5.25 acres. The location of the building will be set back a ways, almost a full acre back. That is for a couple of reasons, mainly security, and for noise, sound, and it is a nice spot. There will roughly be 16 to 17 kids, and three classrooms. We already have a head director, who has credentials, supported by the Child Care Council. We have been searching for almost two years to rent a building in the area. The only



Town of Bethel
Zoning Board of Appeals

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

thing we could come up with is to build a building to meet the Child Care Council's standards. Everything that is zoned for childcare locations is pretty much by the lake and that creates problems with the Child Care Council.

Steve Morey: This is in the RD zone?

Bette Jean Gettel: Yes and daycare centers are not permitted in the RD zoning district. They are permitted in the RS.

Steve Morey: RS only?

Bette Jean Gettel: Yes.

James Cutroni: It will be a full time day care center; normal operating hours will be 6 to 6. They are long days, but because of work schedules. It will be good for us because we actually live on Gayle Road in Mongaup Valley. So rain, shine, or snow we will be there. A lot of local daycares close in bad weather. That will be a real plus for the community right there, that we are just going to be open. Any questions?

Steve Morey: Do you currently own the proposed property?

James Cutroni: Yes.

Steve Morey: I thought you mentioned 17 kids. Do you have that already?

James Cutroni: We have a waiting list in the neighborhood of 30 kids that want to come.

Steve Morey: My question is, do you have 17 kids?

James Cutroni: We are legally tax-exempt, so...

Steve Morey: Are you familiar with the criteria that you need to meet to get a use variance?

James Cutroni: Not really. I went through the town code, basically printed it, and read it. It's hard to get answers. I am in BJ's office every other week, sometimes multiple times trying to figure it all out.

Steve Morey: How long have you owned this property?

James Cutroni: Maybe a year and half, coming up on two years probably.



Town of Bethel
Zoning Board of Appeals

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

Steve Morey: And it is just vacant land right now?

James Cutroni: Yes.

Steve Morey: Let me read to you what our test criteria is for a use variance so you have some idea.

“A use variance may be granted by ZBA, only if certain tests are met by the applicant. 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 zoning regulations have caused them unnecessary hardship. To show such a hardship, they must prove that:

1. They cannot realize a reasonable return, provided such lack of return is substantial as demonstrated by competent financial evidence.”

That statement is saying it isn't just a matter of you telling us how much income that you could have or something like that by this potential daycare. You have to prove that the land is essentially financially useless without this daycare.

James Cutroni: It's really not zoned for anything.

Richard Conroy: Actually it is.

James Cutroni: For residential, I could build a house there.

Richard Conroy: In the RD district, the following businesses' are allowed. Adult oriented business, automotive repair service, bed and breakfast, campgrounds, RV parks, non transient campgrounds, transient eating and drinking places, equipment sales, home based business', hotels and motels, paper goods stores less than 5,000 square feet, and summer camps. That is the business uses that are allowed in that zone. Unfortunately, daycares are not listed.

Victor Kask: They allow institutional uses, don't they?

Richard Conroy: It is not under institutional uses either. Industrial uses, light industrial uses, residential uses, one family dwellings, manufactured home, manufactured home parks, community faculties, cemetery, community buildings, etc., services.

Victor Kask: A daycare center is an I4.

Richard Conroy: Parks, and playgrounds, private and public schools, recreational facility, commercial



Town of Bethel
Zoning Board of Appeals

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

outdoor. What did you say about institutional?

Victor Kask: It is considered an institutional 4, in the New York State Building code.

Jacqueline Ricciani: Our code is different.

Steve Morey: Let me finish reading this criteria, then we can discuss it some more.

2. The hardship is unique-it does not apply to a substantial portion of the district or neighborhood.
3. The requested use variance, if granted, will not alter the essential character of the neighborhood
4. The hardship has not been self-created.

Steve Morey: The bottom line is a use variance is very difficult if not impossible to get. You have to have a lot of proof to come back to this board to substantiate.

James Cutroni: To prove financial hardship, I've done a good job, we don't have financial hardship. I am going to make a living off of this daycare. You see potential income after the first year, it is basically enough to keep the business a float, right now she does it at home for \$3.00 per hour if you do the math. It is more or less, there are profits to be made, but it isn't a get rich quick scheme.

Richard Conroy: The financial hardship means that you can't use this property for anything else to turn a profit. Any of those things that we listed that is what you have to do.

James Cutroni: We don't need another garage.

Richard Conroy: I think the biggest problem here is that the hardship has been self-created. In 2015 daycare facilities were not allowed in that zone.

Bette Jean Gettel: He has been diligently looking for over two years. The school has turned him down. We tried to get it in here in the school, the school said no. It made no sense to us either, but they said no, he could not come here. It is definitely a need. There is a huge waiting list between Bethel, Jeffersonville, anyone traveling 17B going towards Monticello.

Steve Morey: What I would say to you is, you are entitled to a public hearing for your application. For that you would need to review this criteria that we use as a test criteria and do your best to try to prove, to try to follow this criteria to prove your case.



Town of Bethel
Zoning Board of Appeals

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

James Cutroni: It is a necessary service for the community. The property could be used for other things. I can't stand here and lie, and say it can't. I already have a home.

Steve Morey: That is part of the challenge that is what I am getting at.

James Cutroni: Why is it a challenge?

Steve Morey: It is part of our code.

Victor Kask: We are just following the law.

Richard Conroy: That is why all of these districts are made up, to control growth in certain areas, and to allow certain things in certain areas. That is why it is set up that way. The code was just revised in 2009. In order for us to make an exception, these are the rules that we have to follow. You have to be able to convince us that we should do this by using these four criteria that Steve just read to you.

Steve Morey: You are welcome to a copy of it.

James Cutroni: I have one.

Richard Conroy: There is no question there is a need. Unfortunately, that area of the town doesn't permit it.

James Cutroni: Across the street is a garage; I would never get it approved by the Child Care Council. There are permitted areas here, nothing I can get approved. There is another area by the Airport. There is a warehouse. I could rent that building and put in \$100,000 in it and get it approved, but there is no good area for a playground, it is right next to a busy road. I wouldn't want to drop my kids off there. You have the one in Monticello, it is kind of a ghetto, you have Nana's house, which I hear good things about, and then the next one I know about is the one by Port Jervis, by a busy road. Not a place where I would want to have kids. I have already discussed with the neighbors. The neighbors are all for it. They are fully supporting me, 100%. Half of them have asked what they can do to help. To prove the property has no other use, it has been cleared for a house already, I could put a house there, and I could put in a garage. The area needs a daycare. I hear that from Childcare Council all the time. It is basically impossible in this area to open up a daycare. That is why they don't have any. It's not only dealing with the town, that list of criteria I have to prove for a variance, I will pretty much have to do that. What is around here, the only thing I can make work is the old metal workshop, because it is a big empty shell, and I can build an entire building inside that building. There is no place for parking, no place for playground. If by some chance it works out, the building that I have designed there, which you see in the schematics are easily turned into a ranch style house so it can be converted into another form



Town of Bethel
Zoning Board of Appeals

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

of income on its own. That was part of the thought process when I designed the building. That is basically a back up in case something goes wrong down the road. I don't know if I can prove...

Steve Morey: I know it is a mission for you to take on, if for example if you could prove that you searched the RS district where it is permitted, and give us some idea...

James Cutroni: BJ maybe able to help. I had her check the zoning on every property I have looked at the last two years.

Steve Morey: More or less to establish proof that there is nothing available in the RS district for your need.

James Cutroni: Available for the daycare or the town?

Steve Morey: Available for your childcare service. You are trying to ask us to approve a daycare service in a district where it is not permitted. My thought is, at least prove to us that there is nothing available to you in a district where it is permitted.

James Cutroni: Okay, I can do that.

Steve Morey: The first step that I read to you, you cannot realize a reasonable return, provided such lack of return is substantial as demonstrated by competent financial evidence. That's another challenge. You have to come up with something financial, which says that without your daycare you can't get a return on that piece of property. I'm saying it is a challenge. I don't know how you could prove something like that. These are the things that we have to go by to go through this decision process.

James Cutroni: I mean as a growing town, I mean, you may want to reflect upon the process, I mean, you try to build this community up, I heard Duggan School is going to be kicked down again forever reopening. That is a rumor I just heard. This is the next best thing that is coming to the area.

Steve Morey: You are saying you know there is a need, but it is only permitted in an area that is not feasible. That is something you have to bring to the Town Board, to say why can't you permit it in a different district, or why they can't change your zoning to permit it. That is not something that we can make a decision on. We are the Zoning Board of Appeals; we can only make a decision on your appeal for a use that is not permitted in a district.

James Cutroni: I see, thank you.

Steve Morey: Does anyone have any questions or anything?



Town of Bethel
Zoning Board of Appeals

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

No one

Steve Morey: Do we need any additional information before we propose a public hearing, provided you want to continue to go with this process?

James Cutroni: I am pretty much invested in it already.

Steve Morey: Okay, you have a lot of legwork to do. If we propose a public hearing traditionally we would propose for our next meeting, and I don't know if you have enough information together in a month's time.

Bette Jean Gettel: Our next meeting would be August 15th. If there is any other information he has two weeks to get it done.

James Cutroni: I don't know if I can do all that in two weeks to be honest with you.

Steve Morey: If we schedule a public hearing it has to be advertised I within a certain period of time before the meeting, if there is a question in your mind, we can postpone, if you want to come to the next meeting and then request that we go to a public hearing the follow meeting, we can do something like that.

James Cutroni: Let's postpone for now, and I will come to the next meeting.

Richard Conroy: As far as trying to get that area changed for daycare, you might want to talk to the town board to see if you can get on their agenda.

James Cutroni: I've talked to Dan Sturm many times.

Richard Conroy: You would have to make a presentation to the Town Board.

Steve Morey: There is a meeting next Wednesday, a week from Wednesday. You may want to go and explain your case.

James Cutroni: I will do my best. Unfortunately I travel for a living. I will do everything I can to make it to that meeting.

Richard Conroy: You have to get on their agenda and make your presentation. They would be the ones that would say we are going to add a daycare center to this zone. We can only say yes or no on what is in this criteria.



Town of Bethel
Zoning Board of Appeals

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

Dawn Ryder: Then you would have to go to the Planning Board and show them your plan.

Richard Conroy: As Steve said, use variances are almost impossible. The Town Board would have to change the local law for this zoning. We can't change the law. We have to abide by what is in effect.

James Cutroni: Thank you very much for your time.

Jacqueline Ricciani: He is not requesting to be on the August agenda?

Bette Jean Gettel: No.

Steve Morey: Well, I am not certain about that. Do you want to be on the agenda for an update as to where you stand and to make a request that we move to a public hearing for September?

James Cutroni: Yeah, I guess. That will put the whole process behind by a year, winter is coming.

Steve Morey: I understand. Keep that in mind. At this point we are just going to table this matter for the time being. If you want to come to the next ZBA meeting to request a public hearing, contact BJ and she can put you on the agenda. It is a simple matter if you are ready.

Jacqueline Ricciani: Before we start scheduling public hearings, he is going to need an EAF, which I didn't see as part of his submission.

Bette Jean Gettel: I can provide you with that, it has to be done on the website. That is not a problem.

Steve Morey: The public hearing is a process itself. There is a certified mailing that goes out.

James Cutroni: I understand. Thank you.

~~2) Application for an Area Variance for rear and side yard setback located at 1761 SR 17b, White Lake, known as Bethel Tax Map #: 40-1-7, Proposed by Keilly, LLC. (Kurlander)~~

Withdrawn

Jacqueline Ricciani: He paid \$27,250 for the property. To get a reasonable return in a residential area on that kind of investment, I don't think it would be so difficult outside the daycare. He really makes very good points, but he needs a zoning change, and to meet with the town board.

Dawn Ryder: I did look at the zoning on this and looked up the district. And I have to say we messed



Town of Bethel
Zoning Board of Appeals

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

up. To allow a community center, in my opinion that is what a daycare is. Just like our Senior Center is a community center for seniors. We messed up.

Richard Conroy: He is talking about having classrooms there; you can pass it off as a school. You really need to change it.

Dawn Ryder: I can see because of the State, he has to call it a daycare.

Bette Jean Gettel: And the Child Care Council is getting tougher and tougher with the regulations. That is the sad part about it. He has tried for two years. He kept calling my office, can I go here, can I go there, if I told him yes, Child Care Council would say no because of... there is a state road, there is no fencing, which is not a big job, but you have no area for a playground. When you start talking 16 to 17 kids, you need parking, certain facilities.

Steve Morey: Can I ask that you bring up this applicant at the Town Board meeting and maybe advocate on his behalf?

Dawn Ryder: I think he is going to go on the agenda, and we'll talk about it.

Jacqueline Ricciani: Maybe one thing that should be discussed with this guy if he is going to talk about a use, you say it is already permitted where?

Bette Jean Gettel: In the RS.

Jacqueline Ricciani: In terms of acreage and...

Bette Jean Gettel: He met the acreage. It's not like it is going to be close to the road, it is going back at least 200 feet.

Richard Conroy: It's not a high traffic road.

Bette Jean Gettel: And he lives right around the corner.

Richard Conroy: It's a perfect place, no question.

Bette Jean Gettel: We have to try to help this gentleman out. He wants to stay in Bethel, but everything just seems to be shot down. He is getting very discouraged and upset.

Steve Morey: Dawn, do you have anything else for the purpose of this meeting?



Town of Bethel
Zoning Board of Appeals

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

Dawn Ryder: Training, BJ sent out. Solar is coming to town. It is on the Town Board’s agenda to look and ask about the regulations on it. It would be good to have some background on that. I was just going to my calendar, before we meet again, August 8th we will be at Bethel Woods. We would like to have a lot of people in the room when we win the money. It is in the Event Gallery in Bethel Woods, right in our back yard, and Bethel is up for \$100,000 for the first place. There are lesser amounts for second and third. There are five municipalities, and there are at least three or four awards. It would be nice to see all of your faces.

Jacqueline Ricciani: Just keep in mind one of the steps in amending the zoning; it needs to go to the Planning Board for their input. There is another player.

Motion to adjourn by Victor Kask, second by Jim Ahearn

All in favor – 5

Opposed-0

Agreed and carried

Respectively submitted,

Jannetta MacArthur

Recording Secretary.