



Town of Bethel
Zoning Board of Appeals

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

A Work Session was held on December 18, 2017 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 was held on the same date at 7:30 PM. On the agenda at the time was the following:

In attendance, Steve Morey, Chairman, Jim Crowley, Vice Chairman, Richard Conroy, Dan Brey, Jesse Komatz, Jim Ahearn, Alternate, Bette Jean Gettel, Code Enforcement Officer, Jacqueline Ricciani, Attorney, and Jannetta MacArthur, Recording Secretary.

Excused: Cirino Bruno, and Victor Kask.

Seating Jim Ahearn – Alternate

Pledge to the flag

Motion to approve the revised minutes from the November 20, 2017 meeting with the action that Richard Conroy was not in favor of the vote of the new ZBA application forms by Jesse Komatz, second by Richard Conroy.

All in favor: 6

Opposed-0

Agreed and carried

Steve Morey: Even with that change the majority was in favor of that motion?

Jannetta MacArthur: Yes. The vote was 5 to 1.

Steve Morey: We revised these applications, to separate into a Use Variance, and an Area Variance, individually.

Jacqueline Ricciani: You approved them last meeting. They were separated.

Richard Conroy: We are doing the Use Variance first.

Jacqueline Ricciani: Oh, you are talking about this application.

Bette Jean Gettel: By the request to the board there is an Area Variance and Use Variance.

Steve Morey: We are taking them individually; therefore our first agenda is as follows:



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1) Application for a Use Variance for a non-conforming use located at 1761 State Route 17B, known as Bethel Tax Map #: 40-1-7.1, proposed by Keilly, LLC.

Steve Morey: I think a review might help us out here, I'm not sure if every member that is here tonight was at our last meeting. We are talking specifically now on just the Use Variance.

Terry Forman: Correct. On the use variance, in addition to the papers being submitted and this map, there was an encroachment map. Each board member should have a copy. On the use variance, what had happened was, an individual had increased the square footage of the one structure that houses units 22 & 23. What he did, (showing on map) this is the line of the original building, he extended it at the point where it goes over the property line by approximately 6 ft. That increase in square footage on this one structure that holds buildings, 22 & 23, has increased the use of a nonconforming use. That is the reason for that variance application. This is the portion that we discussed earlier in the work session that is the subject of the easement agreement. The only way we can get rid of the one violation is to get that use variance.

Steve Morey: Let's talk about numbers. The enlargement, for what you need the use variance for, is how much?

Randy Wasson: 365 square feet total increase in lot coverage as to what was previously there, and what's there now.

Terry Forman: Just to reiterate there was another building that was here, that was removed.

Randy Wasson: Between the two, there had been four buildings, there are now three structures, but there are still four units. The middle two units were taken down, this one was expanded, this one was removed, and they were combined. There is a duplex instead of separate structures in the middle. The gross total increase is 365 square feet.

Richard Conroy: Say that again, the little piece next to 23? On the other side, you said that was a building?

Randy Wasson: This right here was a building.

Richard Conroy: And when was that taken down?

Randy Wasson: At the time this was....

Richard Conroy: I asked this before; the aerial that I have doesn't show that building, I have an aerial



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from 2012.

Jim Crowley: This map goes back to 2010.

Richard Conroy: 2010?

Randy Wasson: We did the project in the back. It is New Sunflower; it used to be called Redwood Estates. We did that project. That started in 2010.

Richard Conroy: That little piece wasn't there when he extended this building?

Randy Wasson: I can't say that it was there for sure.

Richard Conroy: When did he do the extension?

Bette Jean Gettel: 2015.

Richard Conroy: That wasn't there so it should have no bearing on this at all.

Terry Forman: It has bearing to the extent that the board considers what was there before.

Richard Conroy: It was there when he did this. So how can you count it as part of this building?

Terry Forman: What I am suggesting is, if you look at the total square footage of the buildings that were in this development originally, if you consider what was removed, and what was added.

Richard Conroy: That was removed way prior to this.

Jim Crowley: It is a moot point. It's removed and it's on the other side of the property. I don't even know why we are talking about it.

Steve Morey: The gross square footage of the extension to a use variance.

Jim Crowley: I don't care how many buildings they knock down. That has no bearing; it's what that is over the property line.

Jacqueline Ricciani: What I think what they are trying to say is, the original square footage of these two buildings was this amount, the square footage of the current building is this amount.



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Jim Crowley: And when were they built?

Jacqueline Ricciani: I don't think it is an issue of time, I think what they are trying to demonstrate is to consider the degree.

Jim Crowley: Jacy, they could have been built before zoning, it is a moot point.

Richard Conroy: That building has no bearing on this at all.

Jim Crowley: At least not to me.

Richard Conroy: Me either, because it wasn't there. How can you count.....?

Terry Forman: There is a little section above the red line.

Jacqueline Ricciani: It's what is shown below the red line, is not the only expansion. There are expansions on both sides of the red line, if that makes sense.

Richard Conroy: But are there expansions left and right?

Jacqueline Ricciani: The enlargement that they need the use variance for, the enlargement is more than the 6 ft over the property line. The enlargement is from where... it is not shown on here, but the original building probably ended here, so all of this is the enlargement. Not just the one side of the property line.

Richard Conroy: That's fine, but the building that was knocked down years ago, should have no bearing on new construction.

Jacqueline Ricciani: They are trying to show the expansion was not that significant based on what was there prior. It's only 300 ft more.

Richard Conroy: It wasn't there. You can't count that.

Steve Morey: Here is my interpretation. Even if it was before zoning, this was a bungalow colony. When the zoning took affect, an expansion to a bungalow colony becomes a nonconforming use. If the original building was a bungalow in an existing bungalow colony it can be relevant. We can all have different opinions, but that is my interpretation.

Jim Crowley: How is that relevant?



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Richard Conroy: What does that have to do with that structure?

Steve Morey: There is a bungalow in an existing bungalow colony.

Richard Conroy: Not the one that is next to #23. It's not there.

Terry Forman: If you look at your code, had this been done differently, and the applicant come to you and said, we want to take down this building, and we enlarge this one, and we remove the area variance issue, they may have been able to increase it by that amount in that point and time. I understand what your perspective is. If this had been done in the right sequence, then that could have been considered as addition to this property. I think your code permits for a slight increase.

Jacqueline Ricciani: No.

Terry Forman: It doesn't allow for an increase in a nonconforming...?

Jacqueline Ricciani: There shall be no expansion.

Terry Forman: The expansion....

Jacqueline Ricciani: No, there shall be no expansion or enlargement of a nonconforming preexisting structure. Do you want me to show it to you?

Terry Forman: No.

Jim Crowley: You could knock it down and replace it, of the same size.

Jacqueline Ricciani: Right, it has to be the same exact footprint.

Jim Crowley: That is what I am saying, that this is irrelevant.

Jacqueline Ricciani: That's fine. That is your determination.

Steve Morey: BJ isn't there some history, wasn't there a building permit issued to this unit 22, 23, prior to this addition that was put on without a permit?

BJ Gettel: Back in 2007 yes. It was prior to the zoning change in 2009.

Richard Conroy: So that doesn't matter now either. We're talking about the new addition. That was



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done two years ago.

Steve Morey: The new addition is approximately 12 ft in total to that building by the width of 22, 23. According to this, it is approximately half on either side of that lot line.

Jim Crowley: The lot line is the red line?

Randy Wasson: Yes.

Jim Crowley: It is 6 ft over the property line, and you need a setback of 10 ft.

Jacqueline Ricciani: They need 31 ft.

Jim Crowley: This is becoming more than 320 square feet then.

Terry Forman: 320 square feet was the actual encroachment.

Jim Crowley: That's building, but the complete area would be 31 ft by whatever that width is, right?

Jacqueline Ricciani: Looking at this....

Jim Crowley: You need more than a 320 square ft variance because you need the setback plus what you have already overbuilt over the property line.

Jacqueline Ricciani: I think that is included in the 31.

Jim Crowley: In the 320 ft? No it's not.

Randy Wasson: 365 of building floor space was added, if you were to include this building. I'm talking building footprint.

Steve Morey: There are decks on both sides of 22, 23, which also encroaches on the setbacks.

Jim Crowley: The deck to the right might just make it.

Randy Wasson: Do the decks have to meet the setbacks?

Jacqueline Ricciani: Yes, it is part of the building.



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Randy Wasson: Well sometimes they do, sometimes they don't. The building from end to end is 51 ft. From left to right.

Terry Forman: That is on the other drawing we submitted.

Steve Morey: That doesn't include the decks?

Randy Wasson: Correct. I can provide that information.

Jacqueline Ricciani: Do you know how many square feet was added on? There was a building that was added on too. They were built then an addition was added.

Randy Wasson: 612.

Terry Forman: 51 x 12, approximately.

Jacqueline Ricciani: Which created the enlargement?

Terry Forman: Correct.

Jim Crowley: So 612 square feet.

Steve Morey: That sounds about right, Jim.

Jacqueline Ricciani: Randy was asking about the rear yard. It is 25 feet.

Jim Crowley: Steve, just so I get this right, they need an area variance and a use variance, and we are doing them separately? Why are we doing them separately?

Steve Morey: It came up at the last meeting, and now that we are involved in this, I'm wondering if that was a mistake, we should have left it combined.

Jacqueline Ricciani: There is a different criterion.

Steve Morey: I think that was the reason. We were confusing the use variance criteria with the area variance criteria. So we decided it would probably be better to separate these and deal with one variance at a time. It is a possibility we could approve one and deny the other.

Jim Crowley: What does that do?



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Richard Conroy: The use is the hardest one to get. That is the one we should look at first.

Steve Morey: For the purpose of this meeting, I have pulled the criteria that we use as a gauge. Let's go through that criteria. See if they have given us the information to deal with those specific items, and then we need to see if they can be granted the public hearing for another meeting. If we need something more that hasn't addressed what was requested, then we either ask for more or deal with it. Is everyone okay with that?

Terry Forman: One of the items that was submitted to the board as part of your package, we have an estimate from Kuebler Construction. We have since gotten a second estimate from MJR. I only have this one copy.

MJR Sons Construction estimate is \$18,750.00, \$26,000, \$83,500.00

Jacqueline Ricciani: That estimate from Kuebler is going to need a little bit of explanation if that is okay.

Terry Forman: The cost to remove the entire structure that comprises unit 22 & 23 is \$19,875.00. The cost to rebuild this entire construction \$210,552.00.

Jacqueline Ricciani: Why on a different site?

Terry Forman: So it doesn't violate zoning.

Bette Jean Gettel: To move that building more to the interior of the property, so that it would be in compliance.

Jacqueline Ricciani: Going back to the original size I guess is not an option. The 612 square feet.

Jim Crowley: That is option #3.

Jacqueline Ricciani: Is that what that means?

Jim Crowley: That's how I see it.

Jacqueline Ricciani: I don't understand what the move addition and reconfigure units.....

Jim Crowley: I would imagine that is the mechanical, the electric, plumbing, air conditioning, etc...



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Terry Forman: The roof. All that has to be changed.

Steve Morey: So your interpretation is that the third estimate is to put it back the way it was before these additions were put on.

Terry Forman: Correct.

Richard Conroy: How do these expenses relate to....do you rent these? How does the rent that you got for the bungalow before the addition compare to the rent that you can get after the addition?

Ben Halverston: I made a long-term lease with the gentleman. That's the problem. I wish I could get rid of him. Since he put his money into the building, we have run into a problem. That is our situation.

Steve Morey: What Mr. Conroy is asking you though; did you increase the rent since these additions were put on?

Ben Halverston: No, we didn't increase the rent.

Richard Conroy: So if he wasn't there, could you get more rent for this bungalow the way it is now as opposed to the way it was before?

Terry Forman: Because of the additions of the building, the rent wouldn't go up.

Richard Conroy: For a bigger bungalow, you don't charge more money?

Ben Halverston: I can't charge any more money I didn't put it up.

Richard Conroy: It doesn't matter. So if you have a 500 square ft bungalow you charge the same for a 1,000 square ft bungalow?

Ben Halverston: If I was the one putting it in, I could.

Steve Morey: So because of the present circumstances you can't get any more money for this unit.

Jesse Komatz: Why aren't you getting rid of him? Why don't you go after him for the cost of this? He clearly caused the problem. You are here in front of us but you are not going after him.

Ben Halverston: I was the one that was served, I have to take care of my problem, and I am the one in court.



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Terry Forman: Because we are the property owner.

Jesse Komatz: I understand that. Why isn't he out since he caused the violation?

Terry Forman: I don't know if that was a violation. Even though he violated the lease, he violated the town. We still have the extra expenses that the property owner has to deal with. Not only with addressing the violations with the town, also to incur the cost....

Jesse Komatz: That is my point, why doesn't the lessee pay the \$80,000 to put it back the way it was.

Terry Forman: I think that is an issue.... Realistically in this community they are trying to deal with it within the community. The other reality is I suspect once there is a decision on that, there would have to be a Supreme Court action to confirm that, religious court, it is a long process. The property owner did not create the violation; once he saw the violation he went to BJ, and told BJ there was an issue. So he wasn't trying to hide anything. Whether he would be able to recover this \$80,000 from his tenant...

Richard Conroy: You are telling me you can't increase his rent, even though he made this building bigger. Even though he is in violation of his lease, I would imagine. That doesn't make any sense to me. If he violates the lease, why can't you increase his rent?

Terry Forman: Unfortunately I haven't seen the lease. It is probably a set amount for a certain amount of years. I don't believe there is a provision in there to increase the rent. The real issue is there may be grounds to terminate the lease because of the violation.

Richard Conroy: The first part of the use variance says, "they cannot realize a reasonable return, provided such lack of return is substantial as demonstrated by competent financial evidence." So you are not showing me any returns. It would seem to me that a bigger bungalow would be worth money. You are saying you can't do that.

Terry Forman: What the applicant is saying that despite the situation he is locked into what was agreed to.

Richard Conroy: That makes no sense to me at all. If someone is in violation of something.....

Terry Forman: If you are holding a mortgage, can they increase your mortgage amount?

Richard Conroy: No, but they can take your house away.

Terry Forman: Maybe.



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Richard Conroy: Not maybe. I did it for 25 years. I know.

Terry Forman: It depends what the violation is.

Richard Conroy: That makes no sense to me.

Terry Forman: Ending the mortgage as you are suggesting is more comparable to ending the lease then increasing the amount of the debt.

Richard Conroy: If he is in violation of the lease, you can toss him out.

Jim Crowley: Who built this?

Terry Forman: The tenant that was leasing.

Jim Crowley: The tenant that was leasing built it?

Terry Forman: Yes

Steve Morey: It was done without a building permit, it was done without the landowner's knowledge, and it was completed and occupied before anyone knew.

Jim Crowley: It was done without the landowner's knowledge, right, but this person has a lease with the owner? This isn't the way you are going to get a solution. You are telling me the property owner here has a lease with the individual, but doesn't know on his own property that they built that? What are all these plans for? What is this seven-year-old plan that we are looking at?

Terry Forman: It is an entirely different community back there.

Jacqueline Ricciani: You told us before they are separate properties, separate companies, same owners.

Terry Forman: The problem is from my understanding, that when this work was done, no one was there to see that the work was done until after it was done on either side of the line.

Randy Wasson: I think.... nobody that had seen it probably realized it was over the property line, because they built it inside the fence. The fence is over the property line.

Jacqueline Ricciani: So that is Keilly's fence? I am assuming it is New Sunflower's fence.



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Randy Wasson: I'm not saying whose fence it is, it is on this property.

Jacqueline Ricciani: So someone may have assumed it was on the property line.

Richard Conroy: Last month, this Ben Halvertson, he is the Sunflower guy, right?

Jacqueline Ricciani: He is both.

Richard Conroy: Who is Ben Halvertson?

Ben Halvertson: I am Ben Halvertson.

Richard Conroy: All right. You said, "you did not live here in the winter, when I came up and saw this thing, the first thing I did was call BJ, I went to BJ, and said there was a problem, and we took action right away. She came and put a stop on it." But I thought from reading (the minutes) you are part of Keilly and Sunflower, you are on both sides.

Terry Forman: He is not a member....

Jacqueline Ricciani: But he is a member of the board.

Richard Conroy: He says "I am a member, but I do not serve on the board."

Jacqueline Ricciani: The word member has a lot of different meaning. I took that to mean he is a member of the LLC.

Mr. Halverston: I have shares of the LLC, but I am not an officer.

Jacqueline Ricciani: For which one?

Mr. Halverston: For New Sunflower.

Richard Conroy: That is why we ask for the paperwork that says who is who, which we didn't get.

Jacqueline Ricciani: He is a shareholder, but is not an officer.

Ben Halverston: Right.

Jacqueline Ricciani: He is not a member.



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Jim Crowley: He is still an owner.

Jacqueline Ricciani: Is it an LLC?

Jim Crowley: If it is an LLC, he is an owner.

Jacqueline Ricciani: You own shares in an Inc? This is an LLC. How do you own shares in an LLC?

Ben Halvertson: I don't own shares.

Jacqueline Ricciani: You are a member of the LLC. Members are owners Terry, what are we talking about here? You say he is a member but he is not an owner, he's not an officer.

Steve Morey: In an LLC, members make up that corporation.

Terry Forman: This has to be amended to reflect that Mr. Halverston is a member of the LLC.

Jim Crowley: Let the Chairman speak.

Steve Morey: Before we move further with this process. You need to satisfy our guidelines for Use Variance. I am going to read the first one to you.

Use Variance:

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

Steve Morey: Because you can't even tell us if there is going to be an increase in this bungalow, I don't think you satisfy this. All you have done is shown us what your expenses will be to make modifications. I don't think you have satisfied that, if the board has a suggestion, how they can better demonstrate competent financial evidence, if not, I would like to just move on. Does anybody have any suggestions?

Richard Conroy: They would have to show the rents, and compare them to the cost. That is what I would expect.

Steve Morey: That is the only thing they have. They can show what the income is on that piece of property, and whether it is substantial.

Jesse Komatz: We need to see the lease.



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Steve Morey: We need to know the complete aspects of the lease arrangement. We asked for that previously.

Richard Conroy: For example, you have to show us the rent is so much, and it would take 20 years to make back, what it would cost to remedy this situation. But a smaller bungalow should bring less rent than a larger bungalow. You have to show the comparisons from the different bungalows.

Steve Morey: However it works on your end that is your business. It is just common sense that says that a larger bungalow should bring more than a smaller bungalow.

2. The hardship is unique-it does not apply to a substantial portion of the district or neighborhood.

Steve Morey: Looking at what we are looking at now, I say it is not unique because the rest of the neighborhood is a nonconforming bungalow colony that has the same hardship. You have to prove otherwise, okay? Do you want a moment?

Terry Forman: I want a moment.

Steve Morey: These are things you need to bring to us for a public hearing.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.

Terry Forman: I don't think it will alter the character of the neighborhood. The neighborhood is still a nonconforming bungalow colony, and the neighboring colony is essentially a summer community. I don't think the issue will change the character.

Jesse Komatz: But it is encroaching on another property.

Steve Morey: That's the area variance. As far as the use variance goes, other bungalow colonies have the same situation in terms of expanding a nonconforming use. I guess you need to prove to us why this expansion....

Terry Forman: I think that is criteria #2, where you say it is not unique. I think it is unique here, because of the circumstances, where the addition enlargement was not done or approved by the property owner, who is being violated here. That is a significant uniqueness. It is not as though the bungalow colony owner is coming to this board saying I did this, I made a mistake. This was a hardship that was put upon him.



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Steve Morey: You are back to #2.

Terry Forman: Yes

Steve Morey: Okay. Let's move on.

4. The requested use variance, if granted will not alter the essential character of the neighborhood.

Steve Morey: That is an interpretation. I can't interpret that for you. You can come with your feelings on that. That is what we need to know going into a public hearing. You can probably satisfy that one right now if you want too.

Jim Crowley: You can come back with all this.

Dan Brey: It makes more sense to come back with all of it at the same time.

Terry Forman: Let's go forward.

5. The hardship has not been self-created.

Steve Morey: I know what you are going to say; that a tenant did this, it is not your fault. You are the ones coming to this board. We have to look at it, as it is the landowner's problem, whoever created it, it is still the landowner's piece of property. He is the applicant; he is the one trying to get this resolved. That is how we have to look at it.

Terry Forman: I think that is part of an interpretation. It is clearly relevant, that the landowner did not create the hardship. If it wasn't for that we wouldn't be here at all.

Jim Crowley: Who owns the structure?

Terry Forman: Keilly LLC owns the structure. Abe Weinstock that was before you months ago with Mr. Kurlander, and Mr. Fisher, they were the ones that created this mess. That is why we gave them the opportunity to come here and fix their mess. When they weren't doing what they were supposed to be doing in a timely manner, we attempted to take over. We are trying to resolve this with this board, and to provide you with the information that you need. Imagine if you rent your home to someone for the winter and you come back and they made all these renovations, and you don't know about it.

Jim Crowley: It's your mess.



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Terry Forman: The board has to look at the uniqueness. It is part of the criteria that the board has to consider, as far as the uniqueness and who created the hardship.

Steve Morey: We talked about notarizing, and sworn statements, and things as part of our application process. The only thing that you can tell us in terms of not being self-created is what you tell us. What proof do you have of this? I don't mean to be contradictory or negative to you folks; do you understand what I am saying? You are just telling us you didn't know anything could happen without the landowner's knowledge. Give us some proof.

Ben Halverston: Do you think I would go to BJ's office and say come over, drive over. That is what I did.

Steve Morey: You have to understand sir; we get all kinds of stories. Give me a sworn statement saying that you had absolutely no knowledge of this situation occurring when it did.

Terry Forman: We can give you an affirmation.

Steve Morey: Whatever you think will satisfy us.

Terry Forman: Certainly I can tell you, I don't know if Jacy remembers the exchange between Mr. Kurlander and myself in town court. The issue came down to who is responsible.

Steve Morey: The issue I'm talking about now?

Terry Forman: Yes. At the end of the day we are the owner.

Steve Morey: That's what I said before, you are the applicant.

Terry Forman: I understand, but these things go to the uniqueness and hardship.

Jacqueline Riccinani: There is no dispute that this was done without a building permit. Even the gentleman that did the work admitted he just did it.

Steve Morey: We know that from the Building Department.

Dan Brey: The man who did the work, is he an employee of yours, he wasn't paid to do this kind of work by you?

Terry Forman: If he was paid to do the work, he was paid by Mr. Weinstock. Mr. Weinstock believed



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because he had a lease.

Dan Brey: I thought he owned the building.

Terry Forman: He leased the building to Mr. Weinstock, and Mr. Weinstock did whatever he wanted, because he had his lease.

Dan Brey: Why would he spend the money?

Terry Forman: Because he had a long-term lease. Why wouldn't anybody that has a long-term lease make improvements?

Dan Brey: He must have made more money then, when he expanded it. Why would he spend the money if he didn't get more out of it?

Jesse Komatz: Is there any litigation going on now between you and the lessee?

Terry Forman: Not at this time.

Jesse Komatz: I would say go after him first and then come to us.

Terry Forman: We can't do that because we have to resolve this other violation in town court. We have to be here.

Jesse Komatz: So if we told you that you had to tear that down, you would have to go after him for the money. If we didn't grant these.....

Terry Forman: At the end of the day that would be a remedy. Again, because everyone is religious, they are trying to resolve it. If we can just back up for a minute, I think the additional information that the board wants is a cost analysis on the rental now as opposed to the rental with the restructure and comparison to the cost to remove or renovate and the time it will take to earn back that expense.

Steve Morey: Does everyone understand that?

Terry Forman: When we were here at the last meeting, one of the items that the board asked for was that we brought today was the cost to remove the structure, the cost to put the building back in its original condition. What the board now is asking for is further proof as to the return relative to the rental value next to the cost of removing the portion of the building.



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Jacqueline Ricciani: Let's be clear. This board is only asking for you to provide documentation to comply with the Town Code. They can give you guidance, but it is your burden to provide them with the information they need under this code.

Terry Forman: That was part of the suggestion the board was making.

Steve Morey: That is part of it; however it is not specific just to this unit. Because you are asking for a use variance for that entire piece of property.

Jim Crowley: Correct, because it runs with the property.

Jacqueline Ricciani: It would be particular to this structure. If they get a variance for an enlargement, it doesn't mean they can go enlarging everybody. It just runs with this unit, but with the land.

Steve Morey: What I am getting at, based on our previous conversation here, with the addition on there, there is no additional income, coming from that unit, from this tenant, who has a long term lease. That was discussed verbally. So that is not a deciding factor for the reasonable return on the piece of property. That is only a portion.... I don't know how many units are there, I'll just throw a number out there, that could be like 5% of the overall return that comes in but it is not the complete determining factor, if that addition wasn't on there, this unit would still bring the same money. That is what was spoken before.

Terry Forman: Correct.

Steve Morey: There is more information that is in the code, what essentially says what I am trying to say.... The specifics what goes on with this unit are a factor but it is not the overall factor to the property.

Bette Jean Gettel: What section of the code were you looking at?

Jacqueline Ricciani: 345-50 E 2

Steve Morey: Actually all of these statements, 1-4 has more detail within the code.

Jacqueline Ricciani: In that section.

Richard Conroy: You have (C) 1

Jacqueline Ricciani: Everything after 2. It goes on for 5 pages. All about the Use Variance.



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Steve Morey: Unless the board thinks otherwise, I don't think we can go any further with the process of this use variance application.

Terry Forman: Because of the issues?

Steve Morey: Correct. We should move on to the area variance. Because we separated these, I think the proper thing is for us to table this use variance application pending more information, hopefully to be provided at our next meeting. Does that sound right?

Jim Crowley: Since you have the code in front of you, do your homework for the area variance too. We just keep going over this from meeting to meeting to meeting.

Steve Morey: Okay?

Terry Forman: My suggestion was going to table the area variance too.

Steve Morey: There is so much going on here, it seems like we are bouncing around all over the place not making any progress. Let's nail this down to some hard facts and figures and go through the criteria.

Motion to table the use variance application by Richard Conroy, second by Jim Crowley

All in favor – 6

Opposed-0

Agreed and carried

2) Application for an Area Variance for a non-conforming use located at 1761 State Route 17B, known as Bethel Tax Map #: 40-1-7.1, proposed by Keilly, LLC.

Richard Conroy: We are going to proceed with the area variance?

Steve Morey: That is up to them. If we deny a use variance after a public hearing, they have the option of withdrawing the area variances, or let us....

Jim Crowley: We are going to tell them what they need to get?

Bette Jean Gettel: That is the whole purpose for this.

Steve Morey: Thinking back, the reason to separate the Use and Area Variance was because too much stuff is getting jumbled between the Use and Area Variance. That is why we separated, to deal with them one at a time. The criteria for our Area Variance.



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

Steve Morey: Maybe you are comfortable with whatever you presented thus far. I don't know if the board is comfortable.

Richard Conroy: This building is in the middle of a bungalow colony. It certainly isn't going to change the neighborhood.

Terry Forman: If anything, it is a positive change because it is a new building. New siding, nicer than what was there before.

Steve Morey: We could possibly have enough information for your area variance to grant a public hearing. I don't know if that is what you want.

Terry Forman: Again, The area variance isn't going to be helpful without the use variance.

Steve Morey: And vice a versa.

Terry Forman: Exactly. It would make sense that they both travel together. It may make sense when they both travel together and have the public hearing together.

Steve Morey: I agree, so let's just review this criteria, make sure you are comfortable with it, and go on. The first again is...

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.*

Steve Morey: Being the area variance.

Terry Forman: Again, on that first criteria, I don't think it will be a detriment to the neighborhood. The subject property is a nonconforming bungalow colony. The structure in question has been increased in value aesthetically; there has been a new roof put on, new siding, and new decks. It increased the aesthetic value of the alleviated area. The property and building and structures in question are in the rear of the applicant's property. It is not seen by anyone else in the neighborhood other than the adjacent landowner of the New Sunflower, who has no objections, has no problem with the change. It is a positive change.

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



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Steve Morey: If you review last months meeting minutes, some proposals were made. Lot improvement, lot line change, things like that. It was simply stated that is not reasonable for you folks.

Terry Forman: It is not reasonable under the circumstances, again during the work session; Mr. Wasson addressed that with regards to the road that is on this side of the property. The only way we could get a change here is to get the actual area variance that we are seeking. There is no other way to reasonably resolve the encroachment. What we proposed is the easement. Which is acceptable to both Keilly and New Sunflower.

Jacqueline Ricciani: Also those construction estimates you received, the criterion is whether the benefit would be achieved by some other method. Which another method is taking down the encroaching addition. So you have some of that.

Steve Morey: Let's talk about this area variance. Your area variance is simply to meet the code. The rear setback is 25ft.

Bette Jean Gettel: Correct.

Jim Crowley: It becomes 31 ft.

Steve Morey: I don't know if that necessarily applies to us. That applies to a violation to the code if the Town of Bethel no, you are right, in terms of the dimensions. It becomes wider than that... if that map is correct, because the deck on unit 22.. that portion has some square footage.... I think for us to get a feel for this, we need the total square footage involved, including the section of the deck, and the section of the building.

Terry Forman: The section of the building, I'm sorry to interrupt, was 612 square feet. The deck, Randy do you have that?

Randy Wasson: No, I didn't break out the deck. It's on the drawings actually.

Jim Crowley: Maybe just the one deck on the left. The one on the right may not even come into play.

Randy Wasson: It's on the drawings actually. The deck for #22 is 11ft by 34ft, and the deck for #23 is 36ft x 8ft.

Bette Jean Gettel: You will find the deck for unit #22, will need a side yard variance because... what is the distance between that deck and Unit #21?



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Randy Wasson: I can scale it for you.

Steve Morey: That is what I am asking, because we need to know the square footage off the rear yard setback plus I guess the side yard setback.

Randy Wasson: We have about 8.5 feet.

Bette Jean Gettel: 10 on one side, 15 on the other. Combination is 25. He can shorten the deckthey can modify the deck easily.

Steve Morey: I understand that, but as it exists it is in violation.

Bette Jean Gettel: Correct.

Steve Morey: What I am looking for Randy, is how far the deck on 22 is off the property line. Because you need 25 ft there.

Jacqueline Ricciani: Is that the 8 ft you just told me?

Steve Morey: No that was the side yard.

Randy Wasson: We'll call it 2. Maybe a hair under 2.

Steve Morey: So you are looking at 22 x 11 in square footage on the deck. I think you said it was 11 x 34.

Jim Crowley: It would be nice to have a drawing with all of the stuff on it, instead of scaling these things.

Richard Conroy: That's what we asked for.

Steve Morey: We didn't specifically ask for. What it is

Jim Crowley: If you want an area variance, you need to bring this stuff.

Steve Morey: I say every meeting code is required, as built, and they are both listed there. The math is easy to figure out.

Randy Wasson: On the surveyors drawing, he has 1.25 ft, of the deck over the property line. So that is



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a good number.

Jim Crowley: Whose numbers are we going with? Are we going to actually go out there and measure?

Randy Wasson: What I can tell you is two things. (Showing on map) This overlay, these units, this unit, this one that one isn't shown on this drawing, they are off of his survey map. We took them based off the corners; there is a property corner right there, based on the corners, we dropped his map on top of our map, because our map shows all of this. When I am scaling it, his dimensions are the good ones. This sheet that I gave you; I went out and measured about it about two weeks ago. They are all my measurements. The surveyor is not going to do any better than that. They are actual tape measurements.

Jacqueline Ricciani: How far is it from the property line... how far over is it from the property line?

Randy Wasson: How far is what from the property line?

Jacqueline Ricciani: If there were a property line on here it would be perfect.

Randy Wasson: Okay, I can put that on there.

Jacqueline Ricciani: They want it. We don't know about the 23 side.

Randy Wasson: For example Jacy, I think on the surveyors map, he has 6.05 ft right here over the property line. I can do some math and give you an exact number.

Jacqueline Ricciani: On the right side, that deck, how far is that deck from the property line?

Randy Wasson: 23.

Jacqueline Ricciani: Is that on there?

Steve Morey: Randy scaled it at 30 something.

Jesse Komatz: 5.61.

Jacqueline Ricciani: Do you think that means from deck to the property line?

Jesse Komatz: Yes.



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Randy Wasson: That is the surveyor's number. That is a good number.

Steve Morey: That would make that 19 something feet.

Randy Wasson: Yes.

Steve Morey: That is on 23 or 22?

Randy Wasson: That's on 23.

Steve Morey: We need that square footage information, including the decks.

Randy Wasson: Okay.

Jim Crowley: We want the side yard setback too.

Bette Jean Gettel: Just so you gentlemen are aware, since this has started, Mr. Weinstock moved his hot water from the interior to the exterior. So he now has a bump out on the side there... at the end of the deck.

Jacqueline Ricciani: Which number?

Bette Jean Gettel: 22.

Steve Morey: That is on the property line as well?

Bette Jean Gettel: Yes. That is across the property line too. That was done recently. He hasn't gotten a permit on that.

Richard Conroy: He is still doing work without a permit?

Jacqueline Ricciani: Did he get a permit for that?

Bette Jean Gettel: Of course not, he is above the law.

Randy Wasson: That is 30 inches square, the water heater.

Jim Crowley: Then we need a side yard set back right? So that is another variance? Unless we are going to chop decks apart.



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Steve Morey: That is an easy remedy.

Jim Crowley: But that's not the board's problem.

Randy Wasson: That bump out is over the property line.

Steve Morey: It would have to be; it is only a 1.5 ft off of it now, on that map. Plus you have a side yard situation on 22; you came up with 8.5 ft or something. There has to be a minimum of 10.

Randy Wasson: Like I said, we dropped the surveyor drawing onto our drawing. His drawing was done before the water heater bump out was done.

Jim Crowley: When was the water heater bump out done?

Bette Jean Gettel: This past summer. It's brand new.

Jim Crowley: And the property owner didn't know about this either? It boggles my mind.

Dan Brey: Somebody knows about it.

Jim Crowley: Of course.

Steve Morey: Okay, I think that was item #3.

Bette Jean Gettel: No that was item #2. You are up to item #3.

3. The required area variance is substantial.

Steve Morey: I think that we are trying to determine that with all this square footage...

Richard Conroy: You have so many numbers, which one are you going to use?

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

Terry Forman: No environmental or physical conditions, the setbacks don't....

Steve Morey: That is an interpretation. I don't necessarily disagree or agree with you. I'm just thinking when you go to public hearing, who knows what somebody else may bring up. Everybody all right?



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

Steve Morey: Like I said before, it's just what has been spoken to us. We need to take your word for it. I can't speak for the whole board. I don't know if everyone is going to be happy just taking your word that nobody knew what was going on.

Terry Forman: I can certainly have the applicant submit an affirmation that he didn't authorize it.

Steve Morey: The man sitting right next to you is the applicant. Whatever you want to come up with.

Terry Forman: If I can get Mr. Weinstock write something on paper. I don't know if he will agree. I can have that conversation with the attorney.

Steve Morey: Anything else from anyone on the board?

Richard Conroy: Are we going to get these identifications straight? Who is who on what board?

Terry Forman: Yes we will.

Richard Conroy: We are going to get the corporate resolution completed to show who is on what board?

Terry Forman: Yes.

Motion to table the area variance application by Jim Crowley, second by Jesse Komatz.

Agreed and carried-6

Opposed—0

Agreed and carried

Bette Jean Gettel: The next meeting is January 22nd.

Steve Morey: It gives you a little more time because of the holiday.

3) Letter of resignation of Victor Kask

Bette Jean Gettel: We have received a letter of resignation from Victor Kask. I know last meeting you requested his reappointment, but between that meeting and this meeting we received a letter of resignation via email. I need a motion to receive and file.

Motion by Richard Conroy, second by Jim Crowley to accept letter of resignation from Victor Kask



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All in favor – 6

Opposed-0

Agreed and carried

Bette Jean Gettel: The town board is going to have a new proposed local law. Do you want to wait and see what you would like to do (as far as new board member)?

Jim Crowley: Let's sit tight for a while since we are in the middle of these applications.

Steve Morey: I asked Jim Ahearn before the meeting if he had an interest that he be a board member. He did say he does have that interest.

Jacqueline Ricciani: If that's the case, then the board needs to request that this position be posted so that Jim can make an actual application. You have to open it up to the community.

Jim Crowley: We don't have to do it yet, do we Jacy?

Jacqueline Ricciani: You don't have to do it today.

Jim Crowley: We can just leave it just the way it is, right. We can just seat Jim for a while. There is no time frame that we can only seat him for two months.

Bette Jean Gettel: No.

Jacqueline Ricciani: You can't recommend that he be appointed in Victor's space without advertising.

Steve Morey: Based on the rules of an alternate, for both the Zoning and the Planning Board, and alternate is seated one meeting at a time.

Jim Crowley: If we didn't advertise until say the summertime, each meeting we seat him...

Steve Morey: Correct.

Bette Jean Gettel: When I send out the meeting dates for next year.... I will put in submit by... so you know when things need to be submitted by and so does the applicant. Because they have a problem with that. Training wise, there hasn't been any. We are trying to put together a class; it will be beneficial to both you and the Planning board, on how to read maps. I know that sounds ridiculous, some are experts; some of you could use some assistance.

Jacqueline Ricciani: This comes up every couple of years, and it never quite comes together.



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Richard Conroy: We can still do those online courses?

Bette Jean Gettel: Yes you may. If you have any questions to what hours are needed, don't be afraid to email me. I will let you know what is needed.

Steve Morey: The Town Board is having a special meeting tonight. It was brought up at the last meeting a local law proposal for a moderator to be involved if the Town Board wants to replace or remove someone from one of the boards.

Jacqueline Ricciani: The opposite. Currently the town code requires that if the town board wants to remove one of you that has to be done through a hearing officer, which is an expense that the town would need to incur....

Jim Crowley: We don't fall under as public servant anyway. Why would they incur a hearing officer?

Jacqueline Ricciani: Because that is what the town code says now.

Jim Crowley: But there is no need for it. We don't fall under civil service.

Jacqueline Ricciani: No you don't, but when the town code says this is the procedure, the town has to follow the procedure, and that is the procedure that is set forth in there, for what reason I have no idea. The proposed law is to change it so there is no longer a hearing officer; it is instead done as a routine public hearing with the Town Board, for them to decide.

Jim Crowley: With just cause.

Jacqueline Ricciani: Right.

Richard Conroy: You didn't do your schoolwork.

Jacqueline Ricciani: That is in there already, when it says for cause such as... not filling your requirements. That's been in the code for years.

Motion to adjourn by Dan Brey, second by Jesse Komatz

All in favor – 6

Opposed-0

Agreed and carried

8:55 pm



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Respectively submitted,

Gannetta MacArthur

Recording Secretary