

Town of Bethel
Zoning Board of Appeals

PO Box 300
White Lake, NY 12786
845-583-4649 X15
845-583-4710 Fax

| | | | |
|----------|------------------------------|------------|--------------------------------------|
| Present: | Stephen Morey, Chairman | Attendees: | Jannetta MacArthur |
| | James Crowley, Vice Chairman | | Recording Secretary |
| | Richard Conroy | | Denise Frangipagne |
| | Gary Rohrs | | Councilwoman |
| | Robert Yakin | | BJ Gettel – Code Enforcement Officer |
| | Jesse Komatz | | Jacqueline Ricciani – Attorney |
| | Robert Brown | | Dan Sturm - Supervisor |

The Town of Bethel Zoning Board of Appeals held its monthly meeting on December 21, 2009. The meeting was held at the Town of Bethel Justice Court, 3586 State Route 55, Kauneonga Lake, at 7:30 PM.

Pledge to the flag

Motion to approve November 16, 2009 minutes by Bob Brown, second by Richard Conroy

All in favor -7

All opposed -0

Agreed and carried

1) Public Hearing for an Administrative Appeal to erect a garage on a vacant lot on Rhododendrum Road, Beechwoods, known as Bethel Tax Map#: 31-7-9, proposed by Paul Allison.

Steve Morey: I believe everyone is familiar with this situation. A building permit had been issued in September for the construction of a 2-car garage on the parcel of property, which had since been revoked by the Building Dept. Does everybody pretty much understand that?

Brian Edwards – Attorney: I would like to have a number of items marked as exhibits. They are in order.

BJ Gettel: #1 – town map, #2 deed, #3 bldg permit application 9/30/09, #4 physical permit C8078, #5 Mr. Schulman’s letter 10/20/09, #6 Bldg Dept letter, 10/22/09, stating that the permit has been revoked.

Brian Edwards: I think by just going through these exhibits and explaining what they represent is as good a way as any of explaining the situation.

Steve Morey: Would you like to do that as part of our regular meeting, or in our public hearing.

Brian Edwards: No, this is part of the public hearing.

Steve Morey: We haven't opened the public hearing

Motion to go out of regular meeting to go into public hearing by Jim Crowley, second by Jesse Komatz.

All in favor –7

All opposed –0

Agreed and carried

Brian Edwards: I have a map showing the land of Mr. Allison that has already been indicated. Mr. Allison was interested in building a garage on tax map parcel 31-7.9, which comprises of these lots. (showing on map) He owns a home on the lot across the street, which is a separate tax map parcel and he owns a further piece of lake front property. He has 3 tax map parcels. Under normal circumstances as we discussed at the last meeting, in order to join the parcels together he would go to the county or the town, and they would allow him to do so. But in this case because of the private road he is not allowed to do that. The problem in this instance is if he built a garage on the upper portions of his lands, it is an accessory building, that isn't accompanied by a primary residence. I think it's undisputed that he went to see Mr. Dexter earlier this year. He was explained that it wouldn't work. He was told that what he had to do would be to file a declaration, a covenant; he would have to hire a lawyer to do that. I did not do this for him. But he hired a lawyer who prepared a document, marked as exhibit #2. Which is titled a restricted covenant for the Allison property. The operative provisions of this state that he owns the parcels that I referred to here on the map. Whereas the parcels owned by declarants, the declarants being Mr. Allison and his wife are separated by a private road named Rhododendrum in whereas the declarants will be building a garage on parcels on the top portion of the map and whereas they desire to impose a restrictive covenant against the properties now it is hereby declared by the declarants for themselves, their successors, heirs, administrators and assigned, that as to the premises previously described that the defendants, their heirs, administrators and assigned or anyone claiming under or through shall not be able to sell these lots separate from these lots, thus tying the lots together. Upon recording the document, and I guess providing proof of that to Mr. Dexter he made an application for a building permit, dated September 24, 2009, the building permit was granted, the building permit application being exhibit #3, the building permit itself being exhibit #4. Construction began. I should say that I had hoped to have Mr. Gelsomino here tonight. He was the contractor; unfortunately he has a similar commitment in the Village of Monticello. He is giving testimony at a Planning Board or Zoning Board matter held at the same exact time as this matter. He was unable to be present. I had spoken to him about an affidavit. He was unable to get to the office to prepare an affidavit, and in any event I would like to present him at a future time. I am going to ask at the conclusion of the matter that the public hearing be kept open until the next date so that I can bring Mr. Gelsomino in. I could paraphrase what he is going to testify to, but he started the construction of the garage across the street from Mr. Allison's house. On October 20th Mr. Schulman sent a letter to the supervisor, I have marked here as exhibit #5, I would imagine Mr. Schulman would be speaking on behalf of his client. I'll let him summarize the content of that letter. In any event, based upon that letter, the Code Enforcement Officer issued exhibit #6, and that was a letter to Mr. Allison revoking the building permit. We are here tonight to say that the revocation of the building permit in legal was arbitrary; there was no good reason to do so. Mr. Schulman's client maintains that he has a septic system that is on Mr. Allison's property. I don't know if that is true or not, but in any event, the foundation dug by Mr. Gelsomino didn't uncover any type of

septic system in that immediate area where the garage is to be constructed, and the garage is the only thing that is really the issue here. If there is a septic system on some other portion of the property then I guess there is a septic system on another portion of the property but again Mr. Gelsomino would be able to confirm what I am saying. That is a presentation. I should say that Mr. Allison regrets not being here. His wife is not well, and they are in Florida at the present time. He was hoping right up until Friday to be able to be here. He wasn't able to leave her, and they weren't able to make the trip.

Steve Morey: Thank you. Has everyone seen these documents? Would you like to take a minute to review these documents?

Bob Yakin: Would like to take a minute

Steve Morey: Mr. Schulman, do you want to speak on behalf of Mr. Takourium

Mr. Mark Schulman - Attorney: Mr. Chairman, and members of the Bethel Zoning Board, my name is Mark Schulman, and I am here on behalf of Mr. Takourium; I thought I had enough copies, apparently I didn't make enough, I would ask you to share. Specifically, I assume this is in a RS zone. Because the building permit application to the Building Department was incomplete, and it didn't provide the information that was necessary even under the Bethel Town Code for an application for Building permit. There was no site plan, it didn't indicate what zone it was, it didn't indicate that this was a permitted use in the zone etc. And specifically the zone does not permit an accessory building to be built. And as I have indicated in a letter to all of you, it indicates that an accessory building can only be built on a lot in a RS zone in the Town of Bethel, as an adjunct to a principal dwelling that is also on the same lot and at a location not in the side yards, or the front yard, but in the rear yard and not beyond the certain side of the principal dwelling and as you all know already, there is no principal dwelling here. To clarify a couple of issues that I don't think you are aware of, and these pictures you may keep, I didn't copy them. This is a picture of the existing detached two-car garage on the Allison property as it presently exists, and has existed from the time that Mr. Allison purchased the property. The application didn't indicate that he already has a detached 2-car garage on the same property that his house exists on. #2, this a picture of the side of the Takourium house, indicating there is a pipe for the septic field, and that pipe goes towards the Allison property. We had previously come before this board in 2002 on an application for a variance for a well permit on the Takourium property, so all of this information is previously filed with this board. Mr. Allison was on notice and was given notice of a public hearing in that case when all of this information was discussed before. Here is a map from Alvin Adler who surveyed the property. He put a camera inside the line from the point indicated on this map indicating the existence of the sewer disposal system on the Allison property. The exact dimensions aren't really known. That sewage disposal system has been there since 1913 when the house was erected. Obviously at that time.....

Mr. Gary Rohrs: What size is the pipe? I think you said 2 inches.

Mr. Schulman: I haven't mentioned size; I had just indicated that... it looks about 3.5 inch of pipe. But they put a camera inside and they followed it out, so they know that there is a septic disposal field on the Allison property. You have also heard a lot of comments about construction

and foundations and whatever. This is the farthest the construction on the Allison property ever got. They removed a couple of stumps, they leveled the property, there is no excavation, and there are no footings. There is no anything. So any statements that they should have found part of the septic system when they dug is untrue because they never dug. Specifically because the local zone does not permit the building of an accessory structure independently on a separate lot I assume not having seen the application until just now that this was for a variance as well as for an administrative appeal. But as an administrative appeal this must fail because the applicant was not entitled to build a second detached garage on a separate piece of property without a principal structure already, having his own two-car garage. #2, even if it was a variance in my letter to the board I indicated that it is not within the board's jurisdiction to grant a variance under the circumstances where clearly the Bethel code and the zoning for this district does not permit a accessory building to be built as a principal building that you can't build a garage independently on a lot within this district. It is only residential district, and I have given you a copy of the zoning, I'm sure you have it otherwise. The purpose of the zone is only for residential uses. For all of these reasons, if construction were permitted to occur here, it would mean that the Takourium septic system would be dug up and that residence could no longer be used. So, for two reasons, we are objecting to it #1, it is not permitted in the zone, we don't believe the Zoning Board has the jurisdiction to grant a variance under these circumstances, and #3 because the septic system has existed on this lot since 1913 to permit the current residence to exist if that septic system were disrupted, there is not room on the Takourium property to build an alternate septic system, and that couldn't be done. If any determination can be made here, it would have to be made in front of Supreme Court. This issue would have to be litigated before I believe this board could even consider whether this applicant has a right to dig up a lot and construct a building there when there is a preexisting septic system that specifically has been indicated here and proven that would mean the Takourium's could no longer use the residence for residential purposes and couldn't replace the septic system in any other capacity whatsoever, and I believe my client has a statement he wishes to make unless you have any questions for me.

Mr. Edwards: May I ask a question of Mr. Schulman? Mr. Schulman, as we sit here today what rights does your clients have on Mr. Allison's property.

Mr. Schulman: They have the right to maintain the septic system there that has been there since 1913, with knowledge of this septic system no party including your client has brought an action to acquire title to the property or to dispute my client's right and his predecessor's rights to have this septic system there. We don't know how the septic came to be on the other property. The fact is it is there, it has been there for almost a century, and if you took it away it means that a residence in the Town of Bethel could no longer be used as a residence, because there is no alternative way to provide the Takourium house with a septic system.

Mr. Edwards: Wouldn't your client have to institute an action in order to obtain any rights to the property through adverse possession or via prescriptive easement?

Mr. Schulman: My client already has rights in and through the property for a septic system that has existed there for almost a century. Whatever rights are there if Mr. Allison would like to take them away or try to, his responsibility would be to bring an action to acquire title to the property.

Jim Crowley: I have a question.....

Steve Morey: I just want to advise you two attorneys, this is not going to be a debate between the two of you, and there are other issues.

Mark Schulman: Understood. I think it is a fair question

Jim Crowley: Is there a deed for this property that shows a septic system?

Mark Schulman: No

Gary Takouriun: I have been a White Lake resident for over 20 years; I am a 3rd generation homeowner. My family has been coming to Beechwood since 1930. I played in this cabin as a kid, my friends sold it, the house wasn't taken care of, I bought it, and tried to bring it back, a lot of people said you should have tore it down, it was built in 1913 it was a nice cabin. .

Steve Morey: Before you go on Mr. Takouriun, could you please point out where your property is on this map?

Gary Takouriun: 31-7.10 I believe.

Steve Morey: Could you please color it in? You mentioned you played in this cabin, is it the cabin on this parcel, or the cabin.....

Gary Takouriun: The cabin in question. The one with the septic. When I bought it the house had no floors, no electric, and no windows. I put a lot of money into this place. I wanted to bring it back. It was one of the oldest houses in the town, and it is the oldest cabin in Beechwood. I just wanted to bring it back. I know a lot about Beechwoods, because I spent my whole life, my summers there. So much so, I was on different boards in Beechwood, I was on the water board, the water tower board, the garbage pickup board, and all kinds of boards. I was also elected president of Beechwood for two terms, and during my administration as president of Beechwood, it was frowned upon of any property being used other than for residential homes. If you go through Beechwoods, there are three garages. Mr. Allison owns one, Steven, his brother Paul owns one, and someone else owns one. All other 51 houses are just houses without garages. That is the way as president and during my administration that's the way we really tried to keep it. What I'm worried about if he puts this garage up, it will happen in the rest of Beechwoods. There will be another 48 garages. It will happen in Smallwood, the same thing. He knows that the septic system is there. He has known for a very long time. I have a letter from him stating it that he sent to the Real Estate agent telling them not to rent my house. I know you gentlemen are very thorough, I know you have been up there; someone has been up there looking around. You can see what the house is worth, and you could see what the house would be worth if it didn't have a shower, or didn't have a way to wash utensils, or go to the bathroom. It would be useless, and unacceptable. Me personally, my suggestion is, let him build a garage if he needs a second garage, I don't know why, across the street on his property, which is 31 – 10. 16? On the lake.

Gary Rohrs: Could I ask a question? Is this your cabin? (Takouriun) Is this the full width of this lot?

Gary Takouriun: Yes.

Gary Rohrs: It is twice the size of your lot, correct?

Gary Takouriun: I don't know the dimensions, honestly. Whatever is says there. Yes. Do you understand that survey map? It is a little difficult.

Mr. Schulman: I have attached all the letters, indicating that Mr. Allison was aware since 2002 of the existence of the septic system. It is in the package that I gave you today.

Steve Morey: Is there anyone else in the audience that would like to speak in this public hearing. We do have a correspondence from a neighboring property owner. It is addressed to the building department, from Rita Oussani.

Steve reading letter.

Motion to continue public hearing until January 25, 2010 by Jim Crowley, second by Jesse Komatz, as per the attorney for the applicant.

All in favor – 7

All opposed -0

Agreed and carried

Gary Rohrs: Now it is just the public hearing that has been adjourned, correct?

Steve Morey: Yes, we need a motion to receive and file all of this documentation and I want to include.....

Gary Rohrs: But we can no longer discuss the issue among ourselves.

Jacy Ricciani: Until all of the comments have been received from the public, this board should really not be deliberating, if that is what you mean by discussing amongst yourselves.

Gary Rohrs: I meant more, what do we have to look for. What is lacking?

Jacy Ricciani: The applicant requested an opportunity to present additional evidence before this body because his contractor was not available. So if the applicant is the one that is asking for it knowing that it is going to cause a delay, it must be something that is pretty important to the applicant to get before this board. That is why he made the request. I'm thinking he must have something that he thinks is important. One thing that I would like to add there should be another notice published in whatever paper you use.

BJ Gettel: I will take care of that. I normally put in a continuation of a public hearing.

Jacy Ricciani: You don't have to do a mailing again.

Motion to receive and file all 12 marked exhibits, including the first 6 as stated above, and the following: #7 photograph of house with existing garage, #8 parcel (vacant lot) across the

street, #9 parcel across street October 20th vacant lot, #10 packet of information from Mr. Schulman, #11 copy of survey map dated January 3, 2002 by Mr. Alvin Adler, #12 letter from Rita Oussani, by Jim Crowley, second by Gary Rohrs

All in favor -7

All opposed -0

Agreed and carried

Back to regular meeting

2) Re-Appointment:

Steve Morey: Our next item is reappointments. I am going to change the order a little bit. I would like to discuss the appointment as an alternate before we do the other three appointments. How it got on the agenda, I really don't know. I think we have discussed this before as a board. As I recall in the past we did not feel the need for an alternate. We should discuss it since it is on our agenda. My feeling hasn't changed; we are a 7-member board. 4 would constitute a quorum. 5 would be a super majority.

BJ Gettel: If you ever needed to override a County 239, then you will need 5 members.

Steve Morey: At the time this alternate position came about as town law, I believe simultaneously attendance requirements were placed at the same time. We can discuss as a board, my feeling hasn't changed. I don't feel we need an alternate.

Richard Conroy: I agree. We had so much trouble getting a member, how are you going to get an alternate

Steve Morey: Our supervisor and liaison are here this evening. Do you want to comment on this?

Dan Sturm: Yes. If I recollect properly we allowed for an alternate for the Planning Board, which needed to have alternates. While we did the law about 2 years ago, we allowed the ZBA to have the opportunity for alternates. Last year around this time when you were doing the reorganization you decided not to have alternates. It is just my opinion it is up to the ZBA. You guys have done a great job, you have been together a long time, mostly, and I have never had a problem with a quorum, the last couple of months we did have a problem, if you don't feel a need for it, it is fine with us.

Steve Morey: My feeling, Dan, we did scramble at our last meeting to take a vote. My feeling is we do have a 62-day time period in which to take a vote. I think that gives us a bit of a cushion.

Dan Sturm: Your attendance has really been good. I was the liaison for the ZBA for a while; I don't remember having a problem getting a quorum when we needed it. It is up to the board, whatever you guys want to do, we are fine with it.

Steve Morey: Are we in agreement that we don't need an alternate?

this year.

Jim Crowley: How do we know for sure?

BJ Gettel: Please call me.

Denise Frangipagne: I do recommend that you come for the training for the zoning. We did more adjustments to the zoning, on conservation subdivision. The 17B change we discussed at the last Zoning Board meeting. I may miss your February meeting, because of a conference. If there is anything that comes up, between now and then, you know how to get a hold of me.

Dan Sturm: Congratulations on your appointments. We are always pleased with this board.

Motion to adjourn 8:20 pm by Jim Crowley, second Bob Yakin

All in favor –7

All opposed –0

Agreed and carried

Respectively submitted,

Jannetta MacArthur

Jannetta MacArthur
Recording Secretary