

Town of Bethel  
*Zoning Board of Appeals*

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

Minutes of the November 16, 2009 meeting

Present:	Stephen Morey, Chairman Robert Brown Richard Conroy Gary Rohrs BJ Gettel- Code Enforcement Officer	Attendees:	Jannetta MacArthur Recording Secretary Denise Frangipagne Councilwoman Dan Sturm - Supervisor Jacy Ricciani – Attorney
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The Town of Bethel Zoning Board of Appeals held it's monthly meeting on November 16, 2009. The meeting was held at the Town of Bethel Justice Court, 3586 State Route 55, Kauneonga Lake, at 7:30 PM. On the agenda at this time are the following:

Pledge to the flag

***Motion to approve minutes from October 19, 2009, by Richard Conroy, second by Gary Rohrs***

***All in favor – 4***

***All opposed -0***

***Agreed and carried***

Excused: James Crowley

Absent: Jesse Komatz and Robert Yakin

Jacy Ricciani is the new attorney representing the ZBA.

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

Brian Edwards: Good evening, I am the Attorney for Mr. Allison, who is also present. I'm not sure what the board knows about this matter, but this involves the erecting of a garage. There is a copy of the tax map here. Mr. Allison has 3 tax parcels that he owns. Roads separate them all. (Showing on map) The area between Rhododendum and Hemlock where he intends to build the garage. Where he intends to build the garage is on 3 lots, there is a house, on at least 6, and then there is another road and there is some additional property down by the lake. When Mr. Allison as I understand first went to the Building Department, he spoke with Mr. Dexter who was the Code Enforcement Officer

at that time, and he advised Mr. Allison that these two lots were not connected, they were two separate tax map lots. In as much as it was theoretically possible that the garage lot could be conveyed without the house, that the reason cited in the building inspector's letter rescinding the permit would be applicable. At Mr. Dexter's suggestion, Mr. Allison went to his lawyer and had a document drawn which was subsequently reported to the Sullivan County Clerk's office, which tied the two pieces together. I don't know if you have seen this, or if it is part of the file.

BJ Gettel: It is part of the file Mr. Edwards, they have not seen it.

Brian Edwards: I can probably summarize it very quickly. It is very short; it states that Mr. Allison shall not be able to sell lots 83, 84 and 109, which are the 3 lots where the garage was to be erected without selling lots, 57, 58, 35, and half of 34, which are on the other side of the street where his house is located. That these would have to be sold to the same purchaser, so that these properties and I'm quoting now, "Shall be forever tied to one another and will not be divided by sale or otherwise if a garage is built on lots 83, 84, and 109. If the garage is not built or it is removed prior to sale, this restriction shall be null and void." So, at Mr. Dexter's suggestion this document was prepared. It was signed and recorded, as I'm sure Ms. Ricciani will attest to. That's the cover sheet. Upon presenting this document to Mr. Dexter, the building permit was issued because in Mr. Dexter's view at least this issue had been overcome. If Mr. Allison had been permitted to continue with this construction, the declaration would have taken affect, and the lots would have been sold together. The permit was issued, and sometime later the new code enforcement officer on October 22<sup>nd</sup>, as I think you are aware, rescinded the permit for this very reason. Now, there is also, I understand other...

Steve Morey: I'm sorry to interrupt, but who is the new Code Enforcement Officer, being BJ Gettel?

Brian Edwards: Yes

Steve Morey: You said something to the affect; it was rescinded because of this reason. Because of what reason?

Brian Edwards: Do you want me to summarize..... well.... Have you seen the letter?

Steve Morey: No. You are bringing all this to us for the first time.

Brian Edwards: The letter provides that the Town has revoked your building permit for a garage to be constructed on the lots we have indicated, I have reviewed the documents that were filed, and the definition of an accessory use – or structure under the zoning code, provides an accessory structure which a garage is, must be on the same lot, and serving a purpose customarily incidental to the use of the principal building, since there is no principal permitted use on the lot in question, no accessory use like a garage may be constructed on it. But again, the building of the garage would in fact be an accessory to the house across the street being that the two parcels now have been tied together by the

document that had been prepared at the request of Mr. Dexter, and filed before the building permit to construct the garage, which was originally issued.

Richard Conroy: Why did you cite the individual lots, instead of the tax map parcel. It is going to be conveyed by the tax map parcel not the individual lots.

Brian Edwards: In summarizing this, I omitted the fact that there is a reference after the individual lots to the tax map parcels. And for whatever it's worth I would note that I didn't prepare the document. It does reference the section block and lot numbers. Mr. Allison also mentioned that there is a similar situation down the road.

Mr. Allison: One of my neighbors has the same situation. A friend of mine, Jim Kinne, of Kinne Trucking, has his garage across the road right where he is on Plume Beach Road.

Jacy Ricciani: Can you tell us where are they on the map?

Mr. Allison: (Showing on map). It is next to Gino's.

Richard Conroy: When did he put the garage up?

Mr. Allison: A few years ago. It is a rather large one. I'm not looking for anything like that. He has a beautiful garage

Gary Rohrs: In the documents on file in the building department, there seems to be an issue with the disruption of a sanitary wastewater facility. It seems that a neighbor his whole wastewater both the septic tank and leech field is on this gentleman's property.

Mr. Allison: There was an allegation to that and paperwork was submitted to the zoning previously. That was part of a well application on his part up until recently it was unknown whether that was true or not, based on the allegation. My builder cleared this entire area footprint plus 20 – 30 ft in circumference around the perimeter to stump it. It was heavily wooded; it was a heavy forest area before I took the trees down. He stumped the entire area. If there was anything that was going to be part of the sewer septic system, it would of come up with all of those stumps

Gary Rohrs: That was just an allegation.

Mr. Allison: That was his contention, he was after a well, and the well was here (showing on map) I don't know how he came to that conclusion.

Brian Edwards: There wasn't any evidence of a septic system. In the nicest way I possibly can I just want to say; we believe that this is irrelevant to your decision. It really doesn't have anything to do with whether or not the building of the garage on this lot is an accessory structure that is not permitted or is permitted. But, be that as it may, from the indications on the ground...

Gary Rohrs: There is a section of the code that no building can be built over a wastewater treatment facility. Over your leech field, over your septic, if it were true.....

Brian Edwards: If it were true, it is apparently not the case

Mr. Allison: We just took out at least 20 – 30 stumps right in that area. All huge trees, Old growth, probably 100 years old. Nothing came up at all.

Brian Edwards: And that would be the footprint where the garage would go.

Mr. Allison: Yes

Gary Rohrs: But the gentleman states, I hate to belabor this, but to me it is important, the gentleman states that the system was installed in 1905, big stumps could exist from 100 yrs growth.

Brian Edwards: Again, sir, it's doubtful he was around. The allegations are what they are. These are problems that are more related to a civil matter between the two parties. Again as Mr. Allison sits here and states, there was apparently no evidence of any system that was uncovered when the excavation was done.

Steve Morey: So that I am clear, this map is a larger area. Where is your house located now?

Mr. Allison (showing on map)..... Lots go down to the lake

Steve Morey: You also own property on the other side of this road?

Mr. Allison: Yes. 2.1 right there.

Robert Brown: What you want to do is put up a garage across the road from where you live?

Mr. Allison: This is known as the Beechwood Club, I don't know if you are familiar with Beechwood Club. It is a private community, these are our own roads. We maintain them ourselves. Really they are right of ways. There is no conformity to any type of standards. We use them to go to and from to our homes. I have a horseshoe driveway. I am going to go directly across into my garage.

Robert Brown: The problem is the fact that you live on one side of it, and the garage is going up on the other side. Is that what the problem is now?

Mr. Allison: That is basically it. I have been working on this project for over 3 years. At no time was there any indication that there be any problems, of anything, unless I didn't file the covenant or codicils to the deed restriction. As long as I adhered to that, I was good to go.

Steve Morey: Did you say these are private roads

Mr. Allison: Yes. Beechwood Club Inc. owns them. I am actually on the board. We own these. They are part of our organization. We supply water to the community, and we maintain the roads to the extent they are.....

Gary Rohrs: So to that extent, any kind of precedent that we would set here, wouldn't necessary apply to other communities in the town. For example I am thinking of Smallwood, where there are various unbuildable lots that people would like to put garages on. Public town roads separate those

Mr. Allison: These are private roads. They are owned by Beechwood Club Inc.

Bob Brown: You maintain the roads? You plow the snow yourself?

Mr. Allison: No snowplowing. Mr. Kinne actually does the front road so we can get to the house.

Gary Rohrs: They are seasonal?

Mr. Allison: 80% are seasonal cottages. Except for Billy Katzenberger, he is down here also.

Brian Edwards: In any event, the town does not maintain any of these roads

Steve Morey: Have you any input BJ? Or just the letter that has been submitted.

BJ Gettel: The problem has arisen, because the roads are private. They are not town owned. With the town road they would end up combined in one tax map. Unfortunately what has happened is because they are private roads, the county will not approve. That is what created the problem. I have gone to the County. We have made the phone calls. The bottom line is it cannot be combined, if it were a town road, public road, they could be combined to one tax map number. I would not have a problem.

Brian Edwards: Which I imagine is what led to the declaration.

BJ Gettel: We thought the declaration was going to cover it. He meets all the setbacks and all the standards, as far as placement of the garage, size of the garage. There was a letter of complaint filed regarding the possible alleged septic system, it may be on his property, or it may not be on his property. I haven't seen any paperwork to justify whether it is or it isn't.

Richard Conroy: Who said that letter wasn't good. The tax map office? The county said it wasn't good.

Steve Morey: What letter are you referring to

Richard Conroy: The declaration. That is going to run with the deed.

Steve Morey: Jacy, do you have anything?

Jacy Ricciani: I just want to mention that what Mr. Edwards is asking this board to do, is basically take a look at the zoning code, take a look at what it provides, and render an interpretation because as he points out, and what BJ just mentioned is it talks about lots, and accessories, and principal uses on that lot, and what I think Mr. Edwards want you to find is that by virtue of that declaration locking the parcels together at the point that they are ever sold in the future, that would constitute a lot under the code. As the code stands right now, it seems to say as one of the members pointed out that you can't have a garage on one building, if there's not also a house that serves on the same lot. They are asking for you to make an interpretation.

Steve Morey: The problem seems to be with the county not incorporating all this property as one tax parcel.

BJ Gettel: He currently has two tax map #'s. If it were a public road, it would be down to one tax map.

Steve Morey: Or it could be incorporated as one tax map.

Richard Conroy: If we said okay, the tax map would put it through then?

BJ Gettel: No

Brian Edwards: No, but the declaration would hold, and run with the land

Gary Rohrs: It sounds like we need to decide whether this lot meets the town's definition, versus the county's. We could decide this is as a single parcel for zoning purposes.

Jacy Ricciani: Although everything is done on a case-by-case basis. You are setting a precedent for other types of situations that may arise in the future.

Steve Morey: Doesn't this letter from the Building Dept. revoking the building permit as much as answer that.

Jacy Ricciani: That is what they are appealing

Bob Brown: I've heard Tim say in the past, the problem with erecting a garage on a property with no house on it is that you take the chance of people living in the garage.

Mr. Allison: He actually said that, that is why he was asking me to do that, so that I couldn't turn around and sell it as a house. I want to put my car in it, nothing else.

Brian Edwards: There wouldn't be any Certificate of Occupancy.

Gary Rohrs: The lot itself is not big enough to warrant a residence. It is an unbuildable lot.

Brian Edwards: As far as a house is concerned

Richard Conroy: We are going to need a public hearing on this? I would like a motion to schedule a public hearing.

Steve Morey: I want to make sure these gentleman know how this process works with a public hearing, and if the public hearing is carried beyond one meeting there is a 62 day period in which we have to make our determination, so this process could go as long as 3 months or more.

Brian Edwards: Understood

***Motion to schedule a public hearing on December 21, 2009 by Richard Conroy, second by Gary Rohrs***

***All in favor -4***

***All opposed -0***

***Agreed and carried***

***2) Application for an Area Variance located at Lot 29, Top Ridge, Chapin Estates, and White Lake, known as Bethel Tax Map # 55E-2-45, proposed by Regina Stem. (Watkins)***

Gary Rohrs: Before we waste time on this.....

BJ Gettel: I need to go through a technicality from the last meeting, which needs to be addressed before we get started. You gentlemen had gone through the seqr last month.

Steve Morey: Yes we did.

BJ Gettel: I need it completed and signed.

Steve Morey: Completing by signing, is that what you are saying.

BJ Gettel: Yes. I need your signature on the bottom. Just to reiterate for the record, all your questions were answered by no's. You declared lead agency, is that correct.

Steve Morey: We did not declare lead agency at that time.

BJ Gettel: No, did you declare neg dec?

Steve Morey: Contingent upon feed back from the county.

BJ Gettel: The county's response to me was the reservoir was privately owned. Therefore a 239 is not required. I asked them that if that should change, would they please call me back. I never received a call back, so it stands status quo.

Steve Morey: That is fine. I prefer to get some feed back from the county, if they have no issue, whatever the case may be

Gary Rohrs: I just wanted to raise the issue that since there are only 4 of us, it might be impossible to make a determination today. I have come to the conclusion that I have a precommitment in this situation. I have participated in demonstrations for Friends of Toronto, which is opposed to deny public access, which is the boat launch, which is quite close to this house. One reasonable person could say I am ideologically compromised in making a rational decision. I would like to recuse myself, but that causes a certain problem.

BJ Gettel: You do not have a quorum to make a decision

Steve Morey: We have a quorum for the meeting, however what we would be doing, possibly bring up or answering questions that may have come in the past. However, taking a vote, accomplishing the majority of the board would not be possible if Mr. Rohrs abstains from the vote

Richard Stoloff: I would like to give you some additional information, but I would again ask you most seriously to close the public hearing on October 19<sup>th</sup>. I would ask again that it is not of our making, and it will be snow season sooner than later, that you consider calling a special meeting where you have at least one more board member who was present at the last occasion so you can make a determination. I do have some additional information.

Steve Morey: Before you ..... Dan were you trying to get my attention?

Dan Sturm: No, I was just writing my notes.....

Richard Stoloff: I would make that application; I made that application the last time. You indicated at that point and time you weren't favorable to it because you had a meeting at this time, but I would also like the opportunity to make that application at the end of my presentation but there is additional information based on questions that Mr. Rohrs raised and others, that I would like to present to you with documentation.

BJ Gettel: If you wanted to, you could schedule a meeting in 14 days, and we could do a notification to the paper, it is entirely up to you.

Jacy Ricciani: Are we certain that no one else is coming?

Steve Morey: I'm agreeable to take a short recess, rather than continuing at this point

Recess at 8:00 pm

Bob Yakin arrived 8:10 pm

Back in session 8:15 pm

Richard Stoloff: I understand one of the members tonight was not present for the public hearing, I would assume that individual has had the opportunity to read the minutes of the public hearing and familiarize himself with those particular minutes of the public hearing. I do want to reiterate and maybe go through a brief history because the gentleman was not here. Regina Stem is an owner of real property at the Chapin Estates. She owns a lot that is on two sides of a road, at the time that she purchased the lot; the zoning code in the Town of Bethel had a front yard setback of 50 ft. In July the town board amended the zoning code and indicated that the setbacks from the road on the front of the house were required to be 75 ft in this area. When you read the transcript, you will see the supervisor indicated that it was their intention to create a greater setback in areas under the same zoning Ms. Stem's house is located in. When Ms. Stem first made the application I do not believe that neither she nor Mr. Watkins were aware that the zoning had changed in July. We come here with a need to attain an area variance because in order to construct the home on this particular parcel, which is closest to the reservoir, she requires a variance. What she is seeking is a rear yard variance, and the rear yard variance would be a 25 ft variance so she would comply fully with the front yard variance of the existing zoning and the rear yard would be reduced from 50 ft to 25 ft. That parcel in question is rather unique to the extent that it is on a reservoir and therefore there are no neighbors that could build a house or any type of structure to the rear of this property. The owner of the parcel to the rear of the parcel is Alliance Energy Renewable, and there is a letter in the record from Joseph K Lemoskosky of Alliance Energy Renewable, in which the parcel owner to the rear who actually owns the entire reservoir and a distance from the high water mark to my clients property that is a varying distance, and I'll explain why they do not object to the granting of the variance. The parcel owners to the right and to the left of the parcel do not object, and the HOA which controls the location in construction of parcels within this private community has provided a letter to the board in which they approve the location of the parcel. The property owners own the roads in this community. Generally the lot owners own to the centerline of the road. Since Ms. Stem's property is on both sides of the road, she owns the road in between these two parcels of her lot. Regardless of that, there are easements in the deed, and I provide you with copies of the deed, and that provide that there is a right for all of the homeowners within the Chapin Estate to use the road, and the HOA documents provide that the HOA is responsible to maintain the road, not only for snow plowing, salting, but for repairs and

maintenance for the road. The Homeowners at present time pay \$1200 per year, to the HOA basically for road maintenance. There were, we provided tonight additional information based upon not only the maps that we previously provided, but there were questions raised in the past, that I truly believe were irrelevant, but they require response, and that is to what extent may the public have the right pursuant to permission of Alliance Energy Renewable to walk along the reservoir along for hiking. There was a question raised last time would they be able to hike up and to the point up to my client's property. The answer to that is "no". Because the area of hiking is defined in their license of which I provide you with a copy of a portion of it, and that portion and that area is 50 ft from the high water mark and the flashboard, and if anyone knows what the damn is, the flashboard is at the high water mark because when the water gets to a level above the flashboard, they just overflow the flashboard, and that is the height of the reservoir, The flashboards are at 1220. Before you arrived I was able to show the board a copy of another page of the license agreement which basically provides, and I'll show it to the gentleman that hasn't seen it, that the flashboard at the height of the reservoir are at the 1220 parallel, I didn't want anyone to think that I am misleading you in any way, so the point is that on the map that we provided to you to the extent that you think is relevant it's clear that the area where the public could walk for hiking is a further distance away from my clients property line as reflected on that. It varies probably to a distance over a 100 ft to a distance of less than 100 ft depending on where you are on the property because of the 1220 power line varies. My client, I believe under the law is entitled to a variance. The reason that she is entitled to a variance is because the town changed the zoning, it is for this board to come up with some rationale decision as to why the variance in question should be granted, and if you don't grant it, there should be a rational reason why it shouldn't be granted, but I did provide to your attorney an appellate decision case for her to review with you which is Baker vs. Brownling which is a 1998 case and what that court found was someone wanted to build a concrete patio adjacent to a lake. They came to the conclusion and they wrote in the decision that assuming the concrete patio was on movable supports, the opposed patio will face the water will have no genuine detrimental impact upon the neighboring parcels. That is what we are talking about today. I know there was some talk well maybe we should put the house in another location because Ms. Stem originally believed the house would only be 50 ft from the road. But I think the issue for you is more defined for your consideration, and that is will there be any detrimental affect within this gated community, which has private roads by permitting her to construct the house with a 75 ft setback, and according to your zoning, from the road and 25 ft from the rear. And I would say to you, I couldn't find anything as I went through it in my own mind that I could say would be detrimental to that. The property owners within the community don't find it detrimental, the public is going to walk along the reservoir whether it is at that location, it is always within her property. It can't be detrimental to the publics right; they are permitted to walk along the property. To the extent that no property owner is within a half mile, from the rear of her property line, how could that be detrimental. It's as if you were building a house at the Grand Canyon, and you were saying that you are better off being 25 ft, 50, or 75 ft from the edge of Grand Canyon, it's going to affect someone on the other side. That affect is minimal, if there was I believe, an objection, you would hear from Alliance Energy Renewable, they had an opportunity to do that, they own the reservoir, they own the

property adjacent to that, and they did not indicate to you that they believe that it was detrimental, they just wanted the property owner to be aware of the fact that there is area for hiking along the reservoir, and the property owner is aware of that, but truthfully gentleman, whether 25 ft from the back of her property, or 50 ft from the back of her property, or 37.5 ft from the back of her property, it makes absolutely no difference, and yes is it something that she seeks, because, look at the road, it is dusty, it is a private road, the town does not maintain. The property owner across the street is Ms. Stem. It doesn't affect the property on the adjacent side. The declarations which I prepared, you can't resubdivide, or resell these lots. You can't resubdivide these lots. It is one lot; it's on both sides of the road. It cannot affect the property owner on the opposite side of the road. And no one else has an objection to this. I would ask that you consider, it is my opinion that if you deny the variance, and you didn't act accordingly, based on the unique facts of this case, the detrimental aspect of this is to the community, the community here is the Chapin Estates, AER, and no one in the community being Chapin Estates, or AER, (Alliance Energy Renewable), find it detrimental and to the extent which I don't believe it's even an issue in this matter that you want to consider, that AER has the right to grant the public access to walk along the reservoir, it's not detrimental to their ability to hike within that distance from the 50 ft, from the 1220 parallel, if there are other questions I would like to answer those questions. The reason we showed you the pictures of the road, my client does not have the right to move the road, even if she wanted to. It would create an impassable situation because of the pitch of the land and the layout. It was always anticipated by the Planning Board that there would be a house at this location, it's part of what she purchased this property for, the construction of the house will substantially increase the property value of the property, it will substantially increase the tax base, and I don't think that is a detrimental issue for the town, and I don't again believe that the distance of 25 ft is really substantial, the variance is either in the front or the back, we have asked for the variance in the back, and again it seems to me that when a town passes a zoning code, which recently defines what they think is an important aspect to their zoning, that this board should give deference to the town in what they are doing. A quick story, I am the town attorney in Mamakating for many years. The board once sued the ZBA because of a position they took which you just passed a zoning code, how could you tell us that. I'm not saying anyone is going to do that, the reason being is they are the policy makers they are the ones that have been elected to make those determinations, they do it generally with consultants, with their town planner, they sometime consult with their engineers, and I just ask you again to give some deference to the town board, because they have recently spoken, and I think under the unique set of circumstances of this case that the appropriate thing to do is to grant the area variance, leave the 75 ft from the road as is, under the new change of the law, and granting the rear yard variance at 25 ft. I'll be glad to answer any other questions.

Gary Rohrs: Would this.....

Richard Stoloff: Excuse me, you can't

Jacy Ricciani: Once you have disclosed your potential conflict of interest, you should not be bringing up other issues that may influence the other members at this point. I'm going

to have to ask you to gauge your own questions. If you are asking Richard to clarify something that he had already asked, I think that is appropriate, but to raise an issue that maybe he hadn't covered might be the whole reason to be recused.

Gary Rohrs: That is not the understanding I had from you before, but I'll refer to your greater knowledge.

Robert Brown: I missed the last meeting. You had a public hearing, right. You had no objection from any of the neighbors?

Richard Stoloff: The only objection that came was from Mr. Barrett, who is a member of the friends of Toronto, and Ms. Burke and what they pointed out merely at that time was that there was the ability for Alliance Energy Renewable under its ferq license to have a path existing adjacent to the property for hiking. I don't think they used the word hiking, but they used the word walking. But the license talked about hiking. They just raised the question that the house - being closer to the hiking path. Again, that was the reason why I wanted to bring to the board's attention the fact the path we were discussing the last time, is not a path that will ever touch my client's property, because it is further away from the clients property. It is 50 ft from the 1220 elevation, not a 1225 elevation. Those were the only individuals that spoke, you can read their comments in the minutes that spoke, I'm not sure they spoke against it, but they spoke indicating that was something the board had to consider whether or not it would grant the variance and whether it would have any impact on the public since we don't control that land, and since the land doesn't even touch our clients property where the path is located, I would consider it an irrelevant fact it's just like someone else walking on my neighbors' property. I can't control that. If they permit it, they permit it.

Michael Watkins: There are two houses; there is a house on either side of Regina's lot. We did get calls from both of those two homeowners in favor and support of the variance.

Richard Stoloff: That's why there is no objection from the HOA members. I understand that the M239 review has long since expired.

Steve Morey: We are taking their response as local interest. One thing, after reading the minutes of the last meeting, and you also mentioned in this conversation, is the fact of the matter is it is a private road, and this property owner does own that portion of road that divides her property in it is entirety. You would have to explain to me why moving that road is not a possibility

Richard Stoloff: Because the road, #1, is part of a Planning Board plan with seqr, storm water, the whole nine yards to get it approved in that fashion. And under the HOA declaration, although she owns it, she has no more rights than anyone else except to just use the road, and pay the maintenance of that portion as everyone else does as a whole. She doesn't have the right to move the road under the declaration of covenants. She doesn't have the right to do it. If you could do that, you would have to start a new seqr

process again each time. And she doesn't have a right to do that.

Steve Morey: That is what I am getting at. She would have to start the process again.....

Richard Stoloff: She can't. She would have to amend the subdivision. To amend the subdivision she needs the approval of every member in the locale to amend the subdivision. You just can't go out and amend the subdivision. It is a subdivision of land. She doesn't have the right. She would need a subdivision amendment to move that road. And she can't get one.

Jacy Ricciani: You would also need to consider the practical realities and the expense incurred even if she did have the ability based on the photograph and topography in that area, another consideration that this board has, and I think you are referring to one of the factors that talks about viable alternatives. It also has to be financially viable, and in this case that may not be.

Steve Morey: I would better accept it is beyond reason, and that it's impossible

Richard Stoloff: Well, it's beyond reason, you understand this, I have been in real estate a long time, and the problem is, once you have a subdivision and you divide up the parcels, you divide them up that way, in order to get an amendment especially where you have this many parcels you would have to get the consent of every other property owner to the amendment, and that is just not going to happen.

Steve Morey: I would like to review our 5 checkpoints from last month, and how we answered those questions.

Jacy Ricciani: Steve, if I could, if the board doesn't mind if I could just give you a little bit of frame work to keep in mind as Steve goes through these, even though you may have reviewed them in the past. Mr. Stoloff has given you new and additional information. It may have an impact on how you might have viewed the information last time. You didn't make any formal decision last time from my reading of what happened after the public hearing. There were no definitive findings that were made so I don't think, you are really locked in to whatever it might have been last time, and now you have an additional board member who wasn't there last time, he may have some input as well. As I was preparing for this, I found great language. Your job is to do a balancing act, and to weigh on one hand the benefits of the landowner, Ms. Stem, against the detriment to the health, safety, and welfare of the surrounding neighborhood and community, and that is what you are trying to balance. In reaching that balance you have those 5 other consideration that Steve is going to run through individually. It's not an all or nothing. You don't have to say yes to all of them. To grant it you don't have to say no to all of them, to deny it, it is a balancing act, but when you go through it, and each one of you will vote, you are obligated to put your reasons on the record. You have to give a rational basis for why you are making your decision, and that is what will form the record, and that is what will be used for the basis for an appeal, if Mr. Stoloff goes the next level to a court. If you have any questions to the criteria and how they can apply, let

me know.

Steve Morey: Okay, thank you.

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

The majority of the board said yes.

Richard Stoloff: It was recommended later on in the record, and then later on it was a no. You said I'm not sure why we would answer yes to that question.

Steve Morey: I recall saying that, I don't know as to the majority saying that.

Richard Stoloff: You left it as that, you decided you needed some counsel.

Bob Brown: I'm curious why the board said yes to that question

Steve Morey: I believe our conversation went on to say that, I'm not certain, but it might have been suggested that possibly the applicant could change the size of the house, as one option, and also change the variance, rather than 75 ft setback off the road, go to a 50 ft setback off the road, which would bring the house the additional 25 ft away from the lake there now we have a rear yard setback that does meet code, and a front yard setback that does not meet code. We got into some conservation I believe that was the point; we requested some guidance from our attorney.

Richard Stoloff: With due respect, I don't believe the record which I have read again this evening indicates anyone making a comment about a smaller house. I have read the record twice, I haven't found that. There was the comment about what you have just said about potentially having only a 50 ft setback in the front, and a 50 ft setback in the rear.

Steve Morey: I may be mistaken about that aspect of it. But I know there was something about changing the setbacks, front and rear.

Richard Conroy: By changing the setback in the front that was another way to meet.....

Richard Stoloff: I think your attorney will tell you....., the answer to that questions on a yes or no is or not whether a variance is needed. That is what that question really means, not how you are going to grant it. Is the variance needed, can you do this without granting a variance. That is why generally the answer to that would be no.

Jacy Ricciani: What you need to do is take the application as is presented to you. And she has presented to you an application to build a certain size house, as an example, and it is not really within, it 's not really appropriate for this board to say, change the house, change the style, turn it, whatever, that's not what it means when it talks about

alternative. Alternatives are more along the lines of what Mr. Stoloff has just suggested, one, if this is the meeting, that you intend to take a vote, as to whether to grant or deny this variance, then you need to have more discussion for this record. It's not really a good practice to rely on what had happened a month ago, if you are going to start talking about for example #1, is there is an undesirable change, and the answer to that is no, you are going to need to give an explanation for the record as to what your evidence is that you are relying to reach that conclusion. The same thing for #2, the benefit to the applicant can be achieved in some other way, if the consensus is yes, then you need to articulate what those alternatives are without really changing the application before you. I will give you an example, one of the situations in the case law, if the person wanted to put in a swimming pool, and the zoning board said well don't put it here, put it on a different piece of the property, and the court said no, you were given an application to put a pool in this location, moving it to another piece of the property is not what we had in mind for an alternative. You are really quite limited to what they are asking for.

Steve Morey: You alluded to us that we should take a vote this evening. I am disappointed that the other two members who were at our last two meetings are not here tonight, and I am going to give this applicant the opportunity for us to take a vote this evening, or possibly table that again to our next meeting or a interim scheduled meeting in hopes that we had the full membership to take a proper vote. We have 5 members, 4 voting members. In order to have a majority vote, the other 4 members have to vote in the same manner in order to make a decision on this one way or another. I'll just leave it at that.

Richard Stoloff: How many voting members do you normally have? 5? Or do you have more?

Steve Morey: We have a 7-member board

BJ Gettel: Normally Richard, they have a full board. This board opts not to have alternates.

Richard Stoloff: But the local law provides for a 7-member board?

BJ Gettel: Yes

Richard Stoloff: I'll discuss with my clients

Steve Morey: As Jacy as referred to us, we have answered no to the first question. I think we are covered on that. We are not answering that there would be a problem posed by this, granting this application, however, at our last meeting, the benefit to the applicant can be achieved in some other way, we had answered yes. We did this by majority. My personal feeling was I don't think saying yes to that question was correct then, and I don't think it is now, but I would like to get a feel from the board.

Bob Yakin: I believe I answered no to that question at the last meeting, because I didn't think that given the confines of the property that she could utilize if she was denied the variance

Richard Conroy: We have to go by the application

Robert Brown: I think it should be no

Majority of the board – said no

**3) *the required area variance is substantial; Yes***

Steve Morey: There were mixed feeling there. I recall in the minutes, Bob (Yakin) I think you stated 25 ft doesn't sound like a lot, but 50% does

Bob Yakin: I said no to that

Steve Morey: But the majority of the board said yes. I think 50% is substantial

Richard Stoloff: I think you also passed a comment later on though that if you took the variance of the front, the difference between a 33 1/3% variance, and a 50% variance, I think you made that comment also.

Steve Morey: I don't think it was me, but that comment was made.

Richard Stoloff: Someone made that comment, to say regardless it is substantial no matter what we are doing with this.

Steve Morey: Bob (Brown), your feeling on that whether you feel it is substantial?

Robert Brown: Yes, I go along with your answer from the last time

Steve Morey: On the two items,

**4) *the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district; No***

**5) *the difficulty was self-created, which shall be relevant but not necessarily preclude the granting of the variance. No***

Steve Morey: For the purposes of this particular meeting, we are answering no's on 4 out 5 of those check points. Is everyone okay with that? Are there any other questions, anything else? I was going to request a motion. I would leave it up to you folks, I'm sure you are anxious to have some sort of a decision here, however, I'm not comfortable not having a full board. I can't answer for the full board, but I do have the right to schedule a special meeting just for the purposes of taking the vote.

Richard Stoloff: Based upon your statements on the record. I don't know if it makes a difference. Let me speak to my clients.

We're going to let you vote.

Jacy Ricciani: Mr. Chairman, before anyone starts making motions, if I could just have a couple minutes to look through the file.

If it's not unanimous, it's a denial. I am reading from the Town Code.

***Motion by Robert Brown, second by Bob Yakin to grant variance***

***Roll call vote***

***Gary Rohrs – Abstain***

***Bob Yakin – Y***

***Bob Brown – Y***

***Steve Morey – Y***

***Richard Conroy – Y***

***All in favor – 4***

***All opposed -0***

***Agreed and carried***

***Motion passed***

BJ Gettel: There are some of you that need 4 hours of training. It is required by NYS. There is another 2 hours the town board is aware of this, before the year end. There will be a short notice so I hope you can attend, call me on Thursday. Most of you will have hours that you will carry over. It is new zoning. The other thing, if you have been attending the farmland protection meetings, we are giving you credit for those hours as well. I have ICC classes as well. Please see me.

Denise Frangipagne: I think, and you can check with Planning that you may be able to get credit if you do the Ed McMahon program. It is available on the Sullivan Renaissance website, and I have just given out a disk. It is worth watching, it is very good. I believe Planning is offering credit for that. The farmland protection plan that the town is working on; there is a public meeting tomorrow evening @ 7:30 at the Liberty Middle School. It is also available on the town's website. It is worth taking a look at it. Everyone is aware of the changing of zoning on RT 17B. The change in the setback in that district. Have you had a chance to look at that, or become familiar with that? Can we make that available?

Dan Sturm: It is on the website.

Denise Frangipagne: And Local law #3. Take a look at it, so you are familiar with it. It might be the kind of thing that would come before this board.

Dan Gettel: The commercial district was just made deeper, it is from 250 ft, and they made it to 750 feet. It follows the property line. It jogs in and out. They are considered in the commercial district.

*Motion to adjourn by Richard Conroy, second Steve Morey*

*All in favor – 5*

*All opposed –0*

*Agreed and carried*

9:10 pm

Respectively submitted,

**Jannetta MacArthur**

Jannetta MacArthur  
Recording Secretary