

Town of Bethel
Zoning Board of Appeals

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

Present: Stephen Morey, Chairman
Jim Crowley, Vice Chairman
Richard Conroy
Robert Yakin
Gary Rohrs
Robert Brown
Jesse Komatz

Attendees: BJ Gettel/Enforcement Officer
Jacqueline Ricciani/Attorney
Denise Frangipagne - Councilwoman
Jannetta MacArthur Rec Secretary
Daniel Gettel – Planning Board
Chairman

Pledge to the flag

Full board in attendance

The Town of Bethel Zoning Board of Appeals held its monthly meeting on January 25, 2010. The meeting was held at the Town of Bethel Justice Court, 3586 State Route 55, Kauneonga Lake, at 7:30 PM. On the agenda was the following:

Motion to approve minutes from December by Jesse Komatz, second by Richard Conroy

All in favor – 7

All opposed -0

Agreed and carried

Motion to go into public hearing by Gary Rohrs, second by Robert Yakin

All in favor –7

All opposed –0

Agreed and carried

- 1) Continuation of a 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.***

Brian Edwards: Mr. Gelsomino is scheduled to come in to offer his testimony.

Steve Morey: Is there anyone else that would like to speak

Mark Schulman: I would like to speak on behalf of the Takourian's after the presentation

Gary Rohrs: BJ, are there any limitations to the accessory buildings?

BJ Gettel: No.

Brian Edwards: This is Joe Gelsomino – the contractor for the Allison's.

Mr. Edwards swore in Mr. Gelsomino

Brian Edwards: Do you have the exhibits from the last meeting? There were pictures from Mr. Schulman

Joe Gelsomino: From Gelsomino contractor – general contracting company. Paul Allison is my client. We met in June.

Showing exhibit – October 20, 2009 picture.

Joe Gelsomino: This is an accurate picture. Mr. Allison has 3 lots. These are cookie cutter lots. The frontage is 100 ft – essentially the garage is pretty much centered. Mr. Allison previously had trees cut down. Our first step was to clean up the stumps. On the 17th a Saturday, we spent the day stumping the property. I have a set of pictures. There is a giant heap of stumps to the right. The stumps are huge. There were big holes in the ground. We did rut it up. I'm sure it has settled by now.

Brian Edwards: While you were out there doing this work, was there any septic there?

Joe Gelsomino: No, we exceeded where the garage would be. If there were stumps, roots,Mr. Allison didn't want to disturb the neighbor's property

Brian Edwards: Was there any evidence of a septic system?

Joe Gelsomino: No. Hardwood trees take a long time to get that size. Do you want me to elaborate on anything? I don't believe there is a septic there. That is my opinion, based on the information I have gathered, I don't believe there is a septic. I don't think there is one, based on the tree growth, it is kind of level, green grass; if you walk around the house I don't want to cause any problems. Greg Sementz asked us to stop. That was about 10:30 in the morning. He indicated that an attorney has been called. I believe Mr. Takouriun stopped by, and said there was a stop order.

Brian Edwards: Where would the garage be? Showing on the picture.

Joe Gelsomino: The house is close to the water. This is 100ft wide. (showing on map) There would be a lot of side yard there.

Mark Schulman: This is a picture after the property was cleared. Do you have a picture of the trees before they were removed?

Joe Gelsomino showing pictures on cell phone

Mark Schulman: They are not very distinct. Just briefly as your work as a contractor, have you dug up septic fields from back from the 1900's?

Joe Gelsomino: It was more of a seepage pit. The plans that I looked at show a field. I don't think anyone here has seen a field that elaborate. It wouldn't

Mark Schulman: Al Adler, he had determined the septic with the camera. If your client were given a permit to build if you were in fact to run into any laterals would you and your client be willing to relocate on your property.

Joe Gelsomino: That is for my client to decide, we have a background in construction. If there were a septic here, I'm not sure why Mr. Takouriun wouldn't create his own septic system

Mr. Schulman: The town won't let him

Joe Gelsomino: However I can't speak on my client's behalf. Essentially, out of respect, we stopped, we pulled off, if we were to hit a sewer main, we would notify both parties. My feeling is this septic system is not here. We have removed stumps. If there is a piece of stump removed, there was no pipe. Mr. Allison said do me a favor don't do anything that might upset Mr. Takourian or cause any more headaches here, lets wait and see what the town does. So once again I don't think we have done anything to compromise the integrity of the septic system if one were there.

Gary Takouriun: Can I speak

Brian Edwards: I don't think it would be appropriate for him to ask Mr. Gelsomino questions, his attorney has had an opportunity to.

Gary Takouriun: Homeowner, who owns the house next door. I am a licensed and bonded builder. For 25 years mostly I'm a mechanical engineer, and I have built for the federal government, and I'm bonded by the federal government. I have some experience with topographical maps. I was there when we took all these readings with a laser level with Alan Adler's men. I still hear that when we snaked these lines and found the sewer system that is in question, I was also there and I know he was not there when he dropped those trees on our property about 5 or 6 years ago. The community was very upset about it because nothing was ever done. Those trees came down and when they were trying to clean it up, they did hit my pipes, and it hit some clay pipes from back in the day, and those pieces are still in the dirt, and those stumps were not 7 ft down. And those stumps were leaning on their side for years, and I have pictures of that mess for quite a long time. I've owned the house 11 or 12 years. I know my sewer system is there.

Steve Morey: Does the board have any questions while we are in the public hearing

Jesse Komatz: I would like to know if you ever tried to do any alternative sewer system? Like an evaporation system which would take up a hell of a lot less room than a regular septic system. Did you ever look into putting in an evaporation system?

Gary Takouriun: I didn't see a reason. I was told by Tim Dexter that they would never be able to build

on that property. So why spend \$25,000 on that system.

Jesse Komatz: But it is their property

Gary Takoriun: I realize that. Why fix something that works

Jesse Komatz: I'm just asking if you ever attempted to put in a smaller septic system. Which you can do with an evaporation system.

Mr. Schulman: If I could just comment, obviously the septic system has been there since the turn of the last century. #2, the present owner bought it knowing that it was there. I do have the return receipt card from 2003 indicating that Mr. Allison has received a letter that is in evidence. I can present this now and make it part of the file if there was any question that the Allison's had noticed that the septic was there. Basically the problem is under the code in Bethel. I had represented Mr. Takoriun, we had actually come to this board and asked permission to put a well on the property, and at that time we went through all of the zoning parameters and because of other parcels of property and where everything else is located we were told that #1 there was no room on the property for a well, and that the septic system could not be relocated on this property. Specifically because of its location. If you look at the adjoining properties, there are adjoining properties within a 100 ft of every aspect of the property. So that would affect the placing of the well on any of the adjoining property under the 75A Board of Health rules with regard to septic and wells. In answer to your question, it was already there, but #2 this property is too small and you couldn't locate a septic system on this property now.

Brian Edwards: Are you saying you couldn't locate an evaporation system as the gentleman indicated?

Mr. Schulman: Because he can't. Take a look at article 75A of the Board of Health regulations.

Brian Edwards: If I may just in the form of a brief closing, I would like to remind everybody that we are only here doing this because of the fact that this is a private road. If this was a public highway, we would have gone to the county, they would have combined the parcels, there would be one tax map number for both parcels on either side of the street, and we would have gone ahead and constructed the garage. If Mr. Takoriun were unhappy his recourse would have been to institute some type of legal action. In that sense it is our position that there is no legitimate reason not to grant the relief we are seeking and to be clear the relief we are seeking is the revocation of the rescinding of building permit so that the building of the garage can take place. We feel the septic issue here is somewhat of a red herring. That's all I have. I appreciate the board's indulgence in carrying over to tonight

Jacqueline Ricciani: If you are satisfied, close the hearing

Steve Morey: I'm just wondering does any of the board feel that photographs from preexcavation might be helpful, if not we can close the public hearing.

Jesse Komatz: It could be

Jim Crowley: Whatever the lot looks like.....

Jacqueline Riccianni: Wait, we are still in public hearing.

Motion by Jim Crowley, second by Gary Rohrs to close the public hearing

All in favor – 7

All opposed –0

Agreed and carried

Jim Crowley: We are here to grant this building permit, which the man does meet, the setbacks for the permit, correct? The sewer issue, this is my opinion, is not a zoning issue, of what we are looking at here, the sewer issue is a civil issue between the two parties, not a zoning issue. We are just here to grant whether or not he can build this garage. I don't see how the sewer comes into play.

Jacqueline Riccianni: Maybe I can help explain the issue for the board. Which Mr. Edwards summarized. One of the exhibits that had been entered at the last hearing was a declaration filed by Mr. Allison, which had the affect of binding together a number of smaller lots that he owns in this area. He wants to build a garage. Under the code, section 345-5, in this case the garage would be the accessory use (reading the code) "A use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building." the building permit was revoked because the garage was not on the same lot as the home. What this board needs to decide whether the declaration filed earlier with the county essentially tying these lots together now is in fact the same lot that is required for the accessory building to be built in this location

Jim Crowley: He cannot sell one lot without selling them all, correct?

Jacqueline Riccianni: Correct. The way the declaration I believe is worded, if the garage is built they must all be sold together.

Jesse Komatz: That is for all future.....

Jacqueline Riccianni: And it runs with the land and is filed with the county clerk and if anybody does a title search to try to purchase in the future, they will find it. So any prospective purchaser has notice.

Jesse Komatz: So it would be considered all one lot

Richard Crowley: Except the county won't accept the combination, right?

Jacqueline Riccianni: They can't because it is a private road.

BJ Gettel: If it were a public road, it would have been one lot

Jim Crowley: It is still dedeed, when this garage, if it gets built, it is one lot. He cannot sell just the parcel of property where the garage sits, correct?

Jacqueline Riccianni: They all have to be sold together.

Steve Morey: To answer your question though, it's not dedeed as one lot; it's like an attachment to his

Richard Conroy: It would be a deed restriction. It would only be – he could still sell his piece. It wouldn't make any difference.

Jacqueline Ricciani: I suppose if somebody was unscrupulous they could sell a couple of lots and not all of that. That would present a civil problem for a subsequent purchaser I would imagine. Then the neighbors would not be happy.

Richard Conroy: It is not actually combined in the tax map actually as one piece.

Jacqueline Ricciani: As far as the county is concerned they are separate

Mark Schulman: May I say something? I just wanted to respond to your board members who had asked about the septic system and indicated isn't that a private civil action not involving the board. The answer is that's not true. Because the Town of Bethel has a zoning ordinance and a building ordinance that determines where you can put a well, where you can put a septic system, and this septic system or something is on that property. It might be one thing if the applicant was here and said if in doing the excavation we uncover the septic system we will replace it with Bethel's blessing on this property or whatever manner it can be done legally, but for the board to say, well it is a civil action that doesn't involve us because it is only our decision whether a building permit should have been issued on the property doesn't make any sense because the Allison's bought this property with the septic system or something underneath the ground. We don't know exactly what's there, but we know something is there. What happens to the Takourium property if suddenly they don't have septic, and they can't put the septic on their own property? So in answer to the question posed, yes it does involve the town, yes it does involve zoning, and this is something that has been there since the early 1900's and basically somebody can't just come in and dig it up and say well to bad you don't own this property, we do, but it's been there, and for the board to say it isn't part of our decision making I just don't think it makes any sense.

Jacqueline Ricciani: Can I just respond to Mr. Schulman? I have to disagree with you. The issue before this board is not whether there is a septic on the property or not. The issue before this board is rather the building permit was properly revoked, because there is no principal use on the land where the garage is designated to be built. That's why this board is considering this issue. Of course there are many other building codes that Mr. Allison would be subject to, but he decided to go forward to get a permit build a garage and what not. But the issue whether the septic is there, it is not before this body tonight. I am certain that the town will adhere to whatever other building codes exist for this structure. That is not for this body tonight.

Mark Schulman: I think basically that is an irresponsible statement given the fact that without septic system the Takourium house can no longer be used.

Jacqueline Ricciani: That is not for this board to decide tonight.

Jesse Komatz: When did Mr. Allison buy this property?

Brian Edwards: I don't know. If I could see the exhibit where it was tied together, there is probably a

deed reference. Do you know the answer? (to Mr. Gelsomino)

Joe Gelsomino: It's been in his family, 40 – 50 years.

Jesse Komatz: He didn't purchase it knowing that the septic was.....

Joe Gelsomino: Mr. Allison had spoken with the former owner. This is third person,

Steve Morey: In order for us to get you on the record, please come up.

Mr. Schulman: Mr. Chairman, the public hearing has been closed. We were talking about the usual manifestation.

Steve Morey: He was answering a question brought up by a member of the board.

Jesse Komatz: I'm trying to get an answer to a question, and he may be able to answer.

Joe Gelsomino: Essentially Mr. Allison had told me; I believe that it comes from his Aunt. I believe it was in his family about 50 years. The neighboring parcel (right here – showing on map) I'm not sure of the owner I have never met her; I have never spoken with her. Mr. Allison always refers to her as Val; I believe she is in Florida. Somewhere a long the line in 1973, Val said that a septic was repaired or redone by a prominent corporation, there have been a lot of septic in the area, I have not seen any formal records on any of this stuff, but it is her feeling as a former owner that the septic was in the front. I am not trying to upset anybody, and until this is excavated, I don't think anybody can actually tell you what's right there.

Jesse Komatz: If this septic system did fail, would they have the right replace it in the same area.

Jacqueline Ricciani: What do you mean in the same area?

Gary Rohrs: Can you dig up somebody else's land and put their septic system in, after 100 years it fails.....

Jacqueline Ricciani: Now you are opening a whole can of worms. If the septic is there, then there would be some type of an easement, which would have been there by virtue of the fact it existed for all these years. I would imagine someone would need to make a legal action to determine who owns what's there. Are you talking about if the system failed, can it be repaired?

Jesse Komatz: Can it be reinstalled, another tank put in there and all that? Obviously that would be a stone pit. At any rate, my real question was to find out, when he became a party to owning this property, did he know that the septic was there, he would have created his own problem, knowing when he purchased the property.

Jacqueline Ricciani: I don't know if that information is really available.

Joe Gelsomino: In response to that, Mr. Allison did tell me that the receipt postage that Mr. Schulman

gave you stating that he received a letter from Mr. Takouriun and everything was engineered, etc. I believe that was 9 years ago that would be for the well that was the first Mr. Allison had heard that this was preexisting on his property

Jacqueline Ricciani: You have heard a lot of 3rd party information

Steve Morey: There is a letter from Mr. Allison to Gibson McKean, being the Real Estate agent. (reading letter) – April 23, 2003 - The way I interpret this letter is again it is word of mouth knowledge of the septic system. I would like to also read the letter from the Bldg Dept, to Mr. Allison – October 22, 2009 (reading letter) I'm just trying to clarify things. What is in front of us is an appeal of an administrative decision, which is to revoke the building permit, and this letter states the reasons why the building permit was revoked.

Gary Rohrs: In considering this, do we have a check list like we do for our use variance or an area variance

Steve Morey: No, it is a request to appeal an administrative decision

Jacqueline Ricciani: One of the functions of this board is to also interpret the code, what does it mean, and the question to be interpreted is what is a lot. It is in the definition that Steve just read. And whether the declaration filed by Mr. Allison qualifies to now make it a lot

Steve Morey: Because it is Beechwoods, and it is private roads, and the fact that the county will not recognize these lots as a combined deeded parcel of property, I don't want to put words in anybody's mouth but I believe simply because it is private roads. That's why we have to make the decision that's in front of us.

Jim Crowley: He did everything he could to combine his parcels. Correct? There is nothing more that he can do, right?

Jesse Komatz: He can't break these properties apart, now, correct?

Steve Morey: Only once the garage is built. Once the garage was constructed on the lot in question.....

Richard Conroy: 3 Beechwood lots – one county tax lot

Steve Morey: You said it was lot 9, which are 3 Beechwood's lots.

Gary Rohrs: But that is tax parcel 9. It probably exists as that in his deed

Jesse Komatz: They show all three of them as parcel 9.

Gary Rohrs: Because my deed shows the original lot numbers, and then when land was combined then it became one tax lot, and one parcel of property. So I think all those three comprise one lot.

Steve Morey: (showing on map) these 3 parcels.....

Richard Conroy: Is one parcel.

Steve Morey: To answer your question, Gary, that is my understanding. What we see as #9 here actually consists of those 3 Beechwood lots. And deed restriction, the way I understood it, was that parcel #9, or section lot and block, 31-7-9 cannot be sold separate from Mr. Allison's other parcel once the garage were constructed. (Reading declarants) – in the record from last meeting.

Mr. Takouriun: Can I say one thing?

Brian Edwards: The public comments are over

Steve Morey: You are requesting to address the board, not Mr. Edwards.

Bob Brown: Why can't these parcels be combined into one?

Steve Morey: Because the county will not recognize it as one parcel of property because it's separated by a private road.

Bob Brown: Referring to map, I know my wife is the assessor and I know that she has combined parcels.

Richard Conroy: It's only because it is a private road

Jim Crowley: If it was a town road

Bob Brown: What's the difference?

Gary Rohrs: Is it one lot, if a road goes through the parcel?

Steve Morey: Yes, we just had that.

Gary Rohrs: And that's a private road. Is it that it can't be combined after the fact, since it was once separated? You know what I'm saying? If you own the property, and a road goes through it, then it's still one tax lot, correct?

BJ Gettel: Most of the time, Gary, these private roads are given their own separate tax map number. In other words that road is taxed. If it is a town road, it doesn't have a tax map number. County road no tax map number. State Road, same scenario. But because these roads are private, and there is a homeowner's association, they have a tax map number they are taxed and they become private.

Mr. Takouriun: Well I applied for the well permit; they believed the septic system was there. The board did. That's number one. Number two, when I was president of Beechwood; I personally signed the checks to pay the taxes on those roads, because it is a separate deed. When I was president and Mrs. Brown and still is we had asked these questions, and they said it is separate, because we were trying to get the assessment down.

Steve Morey: That substantiates what BJ just mentioned.

Gary Rohrs: I think we have to limit ourselves in the scope of what we are looking and decide if we are going to grant a variance, for zoning purposes to consider it a single lot

Jacqueline Ricciani: It's an interpretation

Steve Morey: That is what is being asked of us is to appeal the revocation of the building permit. That is why I read the letter from the Building Department, which was the letter to revoke the permit, and for what reasons it was being revoked. Does the board want to look at this parcel of property as a single lot for this property owner regardless of how the county recognizes it?

Gary Rohrs: I think that is the only thing we can decide.

Steve Morey: Is the board in favor of a vote for this application, do you have any concerns, do you want to delay the decision.

Motion to grant this applicant his appeal of the administrative decision, which was to revoke the building permit. By Gary Rohrs, second by Jim Crowley

Steve Morey: Any discussion or conditions placed upon.

Jacqueline Ricciani: I'm not sure you can put any conditions on.

Steve Morey: I want to put that out there if anyone has any thoughts about that.

Jacqueline Ricciani: When it comes to the discussion whether to vote in favor or against in the discussion you need to express why you are voting in that way. And what the underlying factual basis for it is.

Richard Conroy: I kind of disagree with that.

Jesse Komatz: Is that on an individual basis?

Jacqueline Ricciani: It can be on an individual basis, or based upon what the majority is. It should be individual. I would suggest that when each member votes on the roll call, says yes or no that each individual person expresses their factual reason why they are in favor or against the motion. That would work.

Steve Morey: Anything to discuss?

Roll call vote

Jim Crowley – Yes – to approve the appeal, the man did combine his lots, and had it been before the town or the county, we really wouldn't have to be here. He did everything he could to combine these

lots.

Gary Rohrs: *Yes – I vote in the affirmative that we should grant the application because..... We are trying to interpret zoning regulations which are enacted to protect the community, and in every sense this application except for the fact that the county won't accept the designation for single lot this parcel meets the sense of the zoning, of the intent of the zoning.*

Bob Yakin: *Yes – for the reasons that Gary just stated. I am a little concerned about the information that was presented to us regarding septic system for the Takorioun's, but I have been convinced that should not play into our decision tonight.*

Jesse Komatz; *Yes – on the condition that as long as that garage stands, that these lots are always maintained as one property, and sold as one property*

Bob Brown: *Yes – the same as Jesse*

Steve Morey: *Yes – for reasons that were previously stated*

Richard Conroy – No – I am not comfortable with the deed restriction, I think he should be applying for a variance. The building permit was issued, I think they might have holding that deed restriction up, and my opinion is that he should apply for a variance, instead of the appeal on the building permit.

All in favor – 6

Opposed –1

Motion passed

BJ Gettel: March 24, 2010 is training @ Senior Center @ 7 pm

Motion to adjourn by Jim Crowley second by Gary Rohrs

All in favor –7

All opposed –0

Agreed and carried

8:35 pm

Respectively submitted,

Jannetta MacArthur

Recording Secretary

