

**Town of Copake
Zoning Board of Appeals
Minutes- April 28, 2011**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, April 28, 2011, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman Jeff Nayer at 7:00 PM.

Present at this meeting were: Jeff Nayer, Mike DiPeri, Leslie Wood, and Hilarie Thomas. An audience of 4 were present including briefly, Bob Sacks Town Board liaison.

Minutes:

Leslie made a motion to waive the reading and to accept the March 24, 2011 minutes, this was seconded by Mike. The motion carried, unanimously.

Correspondence:

The following correspondence was either reviewed or read;

- A. Copake Planning Board Minutes, 4/7/11
- B. Copake Planning to ZBA, 4/12/11, (Miller)
- C. Copake Planning to ZBA, 4/12/11, (Traver)
- D. NY DEC to Nick Demos, 4/15/11, (Braunstein)
- E. Feeney/Gleason to ZBA, 4/13/11
- F. Columbia County Planning to ZBA, 4/19/11, (Traver)
- G. Whiteman, Osterman, & Hanna, LLP to ZBA, 4/28/11, (Nielsen)

Closed Public Hearings:

Application # 2010-10, Feeney & Gleason, 14 Polk Drive, Copake Lake, Amendment for septic system.

Jeff asked those board members present to review the Copake Planning Board minutes for President's Estates along with the memo from Elizabeth Gleason. He reminded the board members that in order to review a closed public hearing, it would require a unanimous decision to re-open this case.

Leslie made a motion to re-open this application for review, discussion and possible amendment to the Action Taken Form, this was seconded by Mike. The motion carried, unanimously.

Jeff reminded those present that approval had been granted to the applicants for building an addition to their present home. The home is a three bedroom home and will remain a

three bedroom home. They simply want the option of installing their own septic system with BOH approval, or connecting into the HOA Presidents Estates septic system. Originally we approved pending Copake Planning approval. This HOA septic system is now a transportation corporation and under the jurisdiction of the Town Board of Copake and DEC. It is a working septic system because they are having it pumped twice a week. Discussion began with review of the application, and determination of how many homes were hooked up to the President Estates HOA Septic system. Jeff stated that there were about 26 homes hooked into this HOA Septic system. Leslie contends that there should be a viable septic system. Jeff reminded her that whether they remain hooked into the HOA system or create their own BOH system they will have a viable septic system. The amendment to the Action Form merely gives them a choice and allows them to get their building permit at their own risk.

Leslie made a motion to amend the Action Taken Form by deleting the requirement for the Planning Board's approval for the community septic system, this was seconded by Mike. This motion carried, unanimously. The applicant can now draw their building permit, at their own risk of having an approved septic system.

Public Hearings:

Application # 2011-02, Vincent Traver, 60 Anthony Street, Special Use Variance to build an apartment over existing garage.

Leslie made a motion to open the Public Hearing, seconded by Mike. The motion carried, unanimously.

Jeff read the appropriate letters of review from the Columbia County Planning Board and also the Copake Planning Board. Linda Chernewsky, Morris Associates came forward, representing Mr. Traver. Jeff determined that the neighbors had been notified. Although one letter was returned, after a check with Vana, it was sent appropriately to the tax bill address on file.

Linda presented the board with stamped architectural drawings on the proposed apartment as requested from the ZBA. She also showed the recently surveyed plot plan indicating where the septic would be located. Leslie states that the main concerns of egress and fire safety had been addressed. Hilarie pointed out that the plans indicated that the drawings showed the Town of Hillsdale not Copake. Linda stated that this would be corrected.

Jeff asked if anyone in the audience wished to speak to this issue, no one came forward. Jeff than asked board members if they had any further questions, there were no further questions.

Mike made a motion to close the Public Hearing, seconded by Leslie. This motion carried, unanimously.

Jeff read and referred to the Zoning law 232-20, *Accessory dwelling unit. In any district where single-family residences are permitted, and accessory dwelling unit may be permitted by special use permit by the Zoning Board of Appeals, subject to the following conditions:*

- A. The accessory dwelling unit shall not be used as a rental property.***
- B. The accessory dwelling unit or main part of the residence must at all times be owner-occupied.***
- C. Separate access to the accessory dwelling unit shall be provided, preferably on the side or rear.***
- D. The accessory dwelling unit shall consist of not more than two bedrooms, one full bath and appropriate kitchen, living and dining area.***
- E. The aggregate number of bedrooms in the main residence and the accessory dwelling unit shall not exceed five.***
- F. Water and sewage disposal facilities shall be determined to be adequate by the Columbia County Department of Health.***
- G. Preexisting accessory dwelling units shall be considered as conforming and shall be subject to the same use and discontinuance provisions as contained herein.***
- H. Accessory dwelling units shall be subject to annual inspection to ensure that continued use is in conformance with these regulations.***
- I. Current second floor safety egress and safety window requirements must be met.***
- J. Accessory dwelling units must conform to the New York State Fire Prevention Code, have current septic approval from the County Department of Health, meet required setback regulations, and meet current egress and second floor window safety requirements.***
- K. Accessory dwelling units shall not add more than two additional bedrooms.***
- L. Accessory dwelling units in an accessory structure must conform to the dimensional requirements of this chapter of the Town Code.***
- M. The required minimum lot area shall be computed by adding 10,000 square feet to the minimum area for the district in which the accessory dwelling unit is located.***

He also read and referred to the Zoning law 232-28.G, *Before issuing a special use permit, the Zoning Board of Appeals shall assure itself of the following:*

- 1. There shall be no detrimental effect by the establishment of such use.***
- 2. Such use will be in harmony with the district in which located.***
- 3. Such use will be in conformance with New York State Uniform Fire prevention and Building Code(30) and applicable local codes and ordinances.***

Jeff along with members of the board reviewed the plot to determine lot coverage, it is adequate. Point was made that the neighbors wells were not indicated on the plot and this needed to be taken into consideration at the time of the BOH approval for the new septic system. Jeff asked the members if they were ready to act on this tonight, they confirmed that they were.

We will be voting to allow a Special Use Variance for an Accessory dwelling apartment over the existing garage subject to:

- 1. Final Approval of a working septic system from Columbia County BOH for an approved septic system.**

2. Neighbor wells considered in the BOH evaluation.
3. Building permit can be issued at their own risk, the Certificate of Occupancy is contingent on the BOH approval for the septic system.
4. NY State Fire Prevention Code is adhered to.

Jeff asked for a roll call of vote to approve. Hilarie, yes; Jeff, yes; Leslie, yes; Mike, yes. The Action Taken form to be filled with the Town Clerk, with copies to Planning Boards, Zoning Enforcement Officer, Building Inspector, ZBA file, and the applicant.

2. Application # 2011-03; Darren Miller, 290 County Rte 27, Area Variance, to build a garage in front yard.

Mr. Miller came forward and presented drawings that they requested. He also presented a plot plan showing location of house, driveways and the proposed garage. It was again determined that this was in the R-zone, and that this applicant also owns the house across the street. He is asking for relief from the 50 foot front yard setback, and for an accessory building in the front yard.

Leslie made a motion to open the Public Hearing, this was seconded by Mike. This motion carried, unanimously.

Jeff read the referral from the Copake Planning. He then opened the floor to questions and concerns. Frank distributed a memo, and read it into the official minutes. The memo dated April 28, 2011 was read:

Application for variance to erect a barn in front yard.

1. Copake quadrangle, topographic map, United States Geological Survey indicates a consistent grade from the 600 to 700 foot elevation which is approximately the location of this property. The 600 ft mark is from the road edge, therefore the land is fairly consistent from front to back. It is 1.5 ac & a flag lot of 1.3 ac in a 3 ac R zone. 2.2 ac is (????).

2. The proposed 'barn', the accessory building is 1700 sf & the existing residence is 1350 sf & a one story building. Sec 232-3 Definitions...subordinate to the main building on the same lot....

Black's Law Dictionary-subordinate=lower order, class,...having a lower position in a recognized scale....

The barn is 250 ft larger than the house. About 1/3 of the 1700 sf has a ten(10) foot wall height, & the balance of 2/3, has a thirteen(13) foot height, with a gable roof style. It would be larger in scale than the main house.

3. This application would be detrimental to the neighborhood & the fundamental purpose of the Zoning Regulations restricting erection of a garage/barn in a front yard.

Leslie asked Darren why the garage could not be moved back further from the road and or even better why not behind the house. Darren replied that the property was on an incline from the road up behind the house. He would need to cut trees and do a lot more site work. Leslie then asked him what the dimensions of the garage would be. Darren responded that his proposal is for a 48' x 50' garage. He was then asked about the dimensions of the house. The house is 26' x 52'. Leslie expressed concern that not only was this garage proposed for the front yard but also that it will be located very close to the road. Mr. Miller replied that he could move it farther from the road, it would just require more site work, digging into the bank, and cutting trees.

Jeff asked if there would be a second floor in this garage. Answer: no. Leslie reviews the plans again and asks about the height of the two sections. Darren explained that the one section would be 13' and the other section, the workshop would be 10'. He continued that he was aware that his property appeared to be a bit of a mess and by creating a garage he could clean/tidy the appearance of his property by placing his items inside the garage. He explained the location of the driveway and where the garage doors would be located to the proximity of the road.

Frank added that it appeared that the slope of the land behind the house was the same as that in the front. Darren responded that the land behind the house was much steeper than that in the front. He continued that the building would be a nice looking building and the appearance far better than that of a garage/tent. Frank added that the garage would be larger than the house. Darren responded that his house had a full basement. To which a discussion ensued as to habitable space was counted only after NY Building code was adhered to. Frank finished that this building should not be placed in the front yard. Darren responded that he was not aware of accessory building needed to be smaller than that of the main building.

Mr. Miller added that from his property there were two other barns that were visible from the road. The grade behind his house was much steeper than that in the front. It will look a lot nicer than it does now, I have big piles of stuff, it looks very messy. Leslie interrupted by asking the distance the house is from the road. Darren responded that the house was 232 feet from the road. Leslie then stated that the garage would need to be farther from the road. You are requesting three variances, if you move it back to 50 feet, it would be better. Frank questions the flag lot. There are two separate deeds from 1987.

Jeff recapped the concerns: 1. the size of the building; 2. garage in the front of the house; 3. distance from the road. These need to be addressed before we can proceed. He continued that the height of the building is within code. To this Leslie questioned "Do you need that height?" For a garage 26 feet is very tall. Darren replied that it was tall because he needed to get his backhoe into the building. I'm concerned that the building will reflect much larger than it is due to perspective since the house is set back. Darren responded that the height would be necessary as he was using a truss system for his roof. The pitch of the roof would be 9ft 12 in.

Hilarie stated that it should be smaller or he should ask for fewer variances. Leslie stated that she thought 3 variances were excessive. When we make this decision we consider what is in the neighborhood and the number of variances. I think you should move the building back. Darren asks could you live with it if it were moved back and how far back. Leslie answers it needs to be moved back to the required 50 feet. Mike agreed that by moving it back one variance would be eliminated.

Discussion of the area and the impact this building would or would not have. Darren asked I do not understand how this will have an adverse impact on the neighborhood since there are two other barns in the area visible from the road, and I own the house across the street.

Leslie asked if you were to reduce the size of the building, how would you do that. Darren replied that his evaluation of the size was to accommodate the "stuff" that he has all around his yard that would be housed inside the garage. If he were asked to reduce the size then he would need to reevaluate the project to determine if it were worth the cost for what his concession would be. He continued that he needed to free his basement of stuff, as you can't even walk through it, I need a big building, and if the size was reduced, in addition to the site work that will be needed to push it back 50 feet, I don't know if it will be worth it. Leslie added asked if we should require the building to have doors and windows for ventilation and safety. Darren assured her that it would have both. Jeff informed him that he would need better plans before he gets a building permit, you'll have to show all doors and windows. The issue of the accessory building being larger than the main building came up with a reference to the Planning Board review. Jeff explained to them that he had questioned Town Attorney, Tal Rappleyea about this issue, his response was that it was an interpretation of what subordinate meant. Does it mean smaller, lesser in value, etc.

Jeff asked if anyone in the audience wished to speak to this issue. No one came forward to comment. He then asked for a motion to close the Public Hearing.

Leslie made a motion to close the Public Hearing, seconded by Mike. The motion carried, unanimously.

Jeff asked the Board Members if they were ready to act on this application tonight, or wait; they had up to 62 days. I know there are some concerns by board members, and we need to narrow this for concessions that can, or will be made. Do we proceed with this or should we hold off. All the members replied that they were ready to act tonight.

Jeff recapped again; we will be voting to allow an accessory structure to be placed in the front yard of the main structure. It will be larger than the main structure. It will be located at a 50 foot set back from the road, and will have windows and doors in the work shop area as well as a connecting door from the workshop to the garage, this all for safety reasons.

Jeff began to read the permitted action for the Board of Appeals for area variances.

3. Area Variances

a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall consider:

1. Whether and undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Answer: It is a detriment, although not a major one, but it is similar to the general area. Hilarie expressed Copake as a whole should not be dismissed.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue other than an area variance.

Answer: It could be placed in the back of the house without variances, but it would cost a lot more and more trees would need to be cut.

3. Whether the requested area variance is substantial.

Answer: Yes, it is a huge building and in front of the house, near the road.

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

Answer: You are skating very close. This is a very close decision.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

Answer: Yes.

Jeff asked for a roll call of vote: Hilarie; yes, Jeff; yes, Leslie; yes, Mike; yes. The Action Taken Form will reflect that an approval for an 1824 sq ft garage will be located in the front yard, not closer than 50 feet from the road. Windows and doors will be included in the workshop area. The Action Taken form to be filled with the Town Clerk, with copies to Planning Board, Zoning Enforcement Officer, Building Inspector, ZBA file, and the applicant.

New Business:

New Applications:

None

Training With Tal:

Jeff reported that Tal was available on the 1st Monday of June at 4 to 6 PM.

Comprehensive Planning Committee:

On June 6, there will be a presentation to the Town. We have been asked to send two representatives from the ZBA to represent our board. The result is for a master plan for the Town Zoning which has to match our present zoning. This is very important as it will establish the zoning for our town for the future. Leslie asked to be considered for this.

Old Business:

Zoning Book & Building Oversight Committee:

The meeting was cancelled, due to lack of attendance by all but one member. It is going slower that we wanted but they are working on it. Bob suggested google docs; as a way for all to work on the same document simultaneously, for intra-zoning wording, while all able to see the suggestions of remaining members.

Adjournment:

Leslie made a motion to adjourn this meeting, this was seconded by Hilarie . The motion carried. The meeting adjourned at 9:30 PM.

The next meeting will be held on Thursday, May 26, 2011, at 7:00 PM.

Respectfully Submitted,

Theresa A Traver, Recording Secretary

