

**Town of Copake
Zoning Board of Appeals
Minutes- August 25, 2011**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, August 25, 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, Frank Peteroy, and Hilarie Thomas. Dustin Bessette, alternate was absent. An audience of about 10 were present including, Ed Ferratto, Zoning Enforcement Officer, and Bob Sacks, Town board Liaison.

Minutes:

Leslie made a motion to waive the reading of the July 28, 2011 minutes, this was seconded by Mike. The motion carried, unanimously.

After discussion of some corrections that were made, Frank asked that the board waive the acceptance of these minutes until all have had the opportunity to go over them.

Leslie made a motion to postpone the acceptance of the July 28, 2011 minutes, this was seconded by Mike. The motion carried, unanimously.

Correspondence:

The following correspondence was either reviewed or read;

- A. Copake Planning to ZBA, 8/14/11, (Nielsen)
- B. Copake Planning to ZBA, 8/14/11, (Smoyver)
- C. Copake Planning to ZBA, 8/14/11, (Frawley)
- D. NY DEC, 8/9/11, (Nielsen)
- E. NY DEC, 8/5/11, (Frawley)
- F. Floods Sanitation, 8/11, (Smoyver)
- G. Columbia County 911, 8/12/11, (Mariner Tower)
- H. Copake Panning to ZBA, 7/23/11, (CampHill Village)
- I. Columbia Planning to ZBA, 8/17/11, (Nielsen)
- J. Copake Planning to US Fish & Wildlife, 8/16/11, (Mariner Tower)
- K. Copake Planning Minutes, 8/4/11
- L. Rappleyea to Sloan, 8/18/11, (CampHill Village)
- M. Mariner Tower to ZBA & Planning, 8/4/11, (Mariner Tower)

Jeff asked ZBA members to review their calendars for a second meeting for September. It is necessary as there are many applications on the agenda for next month. The group decided that September 9, 2011 would be the agreed upon date.

Closed Public Hearings:

None

Public Hearings:

Application # 2011-05, Mariner Tower, cell tower to be located on the property of Ezra Link, 3124 Cty Rte 7, Area Variance for height.

Jeff read correspondence from Mariner, apprising them of the revised application. Mariner Tower has revised their application to seek only a variance for height as they have reconsidered the alternate location which meets the setbacks. Jeff informed all in the room that the Public Hearing had remained open, and asked Mr. Chris Ciolfi to come forward.

Jeff read all the correspondence pertaining to this application; from the Planning Board, as well as the letter sent and received from the US Fish & Wildlife. He continued by reading a letter from Columbia County 911 Director, Robert Lopez. Jeff then opened the meeting, asking anyone who wished to speak to also state their name and township.

Michael Cohen, Copake asked to speak to the issue. He stated that the proposed tower would be visible from his property and expressed concerns of how this may have a negative affect his property values. He requests that should this go forward if a balloon test were to be conducted after the leaves come off the trees to grasp the full visual impact during the winter, to see a variety of designs for the tower so it is not so visible, and would like some sort of guarantee that no other towers will go up in the area.

Leslie asked to comment on this, she informed Mr. Cohen that the reason for this tower being 165 feet in height was that Mariner Tower was asked to move the tower to the alternate site, this was done in order to maintain the set back distance from one of the abutter properties'. We felt it important to have it further away from the abutters' home. by doing this it changed the height from its original request of 125 feet, as the alternate location is a bit lower in elevation than the original site. She continued that although it would be wonderful to guarantee all kinds of things for the future it is just not possible. We feel that we as the ZBA Board are doing everything possible to assure that only one tower will need to go up. By increasing the height, this will enable the tower to house multi carriers.

Jeff added that the law as written provides protection from other towers going up to the extent of another company would need to prove that there is not adequate coverage for their network if housed on this Mariner Tower. If we deny them the height variance they can legally go up to 125 feet. By doing this, there could be inadequate coverage for other

carriers to be housed on this tower. We are trying to minimize the visual impact of additional towers for our area.

Mr. Cohen asked for clarification that the signal from these towers is carried 3 to 5 miles before being picked up by another tower. Mr. Ciolfi, spokesperson for Mariner Tower clarified by stating that it depends on the topography, but generally that is true. Mr. Cohen then asked by increasing the height of the tower, it increases the space that can be utilized by other carriers and would decrease the need for other towers in the area. Mr. Ciolfi agreed that this was correct. He added that in the current market, and technologically there would be no need for an additional tower. The town zoning law controls that with the law as written; the planning and zoning board can deny another company from construction unless they can demonstrate that they cannot go on the existing tower. Mr. Cohen then asked about the design, to which Mr. Ciolfi stated that the town law recommends the design being proposed for this site. It is the most useful and because of the lattice style allows the most light to go through it is about 16 feet at the base and narrows to 4 feet at the top, and is the least visibly obtrusive. He concluded that the fake trees, silos and other camouflage would look a bit ridiculous at 165 feet, to which Mr. Cohen agreed.

Jeff asks Mr. Ciolfi if there is a dismantle clause, should the tower become obsolete. Mr. Ciolfi replied that this is not only included in our town law, but has also been included in the contract with the land owner. Leslie questions protection of the Shad Bush Tree flagged by The US Fish & Wildlife. Mr. Ciolfi stated that this is a non issue in the new location, it was actually closer to the original location, but would be protected. Frank then asked if it would be affected by the power lines going to the tower. Mr. Ciolfi the power would be going to the west of the bush. Frank asked of the easement of 3 feet, Mr. Ciolfi made mention that Mariner Tower was before the Planning board with a proposal to allow the power lines to be above ground as this would have the least environmental impact to the area. Far less intrusive than cutting trees and having to have them stumped as well. Frank asked him if he would need to file a storm water report, the reply was that this would not be necessary for less than an acre of disturbance as a good portion of the power lines would be through open fields. He makes note of the ledge that is within the area, some trees will be cut, but by placing the power lines above ground there will be no need to stump them. The stumps will be left, which will be less of a disturbance.

Frank leads a discussion of the substantial difference within NY Municipal law and Black's Law Dictionary between a waiver and a variance. He expressed concern that it is a legal issue for clarity. Mr. Ciolfi questioned him that the local law says waiver, to which Frank said that this is incorrect. Frank said that it is not a significant issue, but in order to make it legal it must be a variance to be written in.

Jeff and Leslie question regarding the color maps with the different signals in the two different locations and with the two different heights. Please explain the maps, as I do not see much difference in these diagrams. Mr. Ciolfi explains that these are more significant as an engineering tool. He further explained that for each foot that you go down in height decreases some of the quality and service area, these photos are computerized projections

of quality of service and coverage area. In the immediate area the coverage is very similar, as you depart from the site is where you will notice a difference in service. After the comparative of the 150 feet and the 165 feet at the alternative site there is a significant difference as to the further away you are from the tower. In short we need to stay high to be inviting, this will allow for co-residence on that tower to have a better quality of signal. We are at your mercy, we are asking for 165 feet, for the topographical change from the original site to this new location. Frank adds that the coverage would likely increase without the leaves on the trees. Mr. Ciolfi agreed that coverage would improve without the interference of leaves.

Jeff asked whether new carriers would or could challenge our law as a tool to put up their own tower. Mr. Ciolfi informed the board that the cell technology for AT&T, Sprint, and Verizon although not exactly the same use very similar technology. Mr. Ciolfi reminded the board that they had originally requested the height variance for 150 feet, but did agree to move the location to honor the setback and are now asking for the 165 feet, as the ground dips in the new location. Jeff adds that although they are asking for the additional 15 feet is irrelevant as Frank pointed out it would be the to compensate for the dip in the terrain. Hilarie asks for explanation of why we would suggest that we allow the 165 feet , when the applicant is asking for 150 feet. Frank explains that this is to allow for the drop in elevation for the new location. Hilarie then adds by why when I see the propagation maps and I see no big difference, yet in photos of what it would look like I see a big difference. Mike adds that at 165 feet it makes the tower more attractive to competitors to locate on the tower and it gives the residence of Copake better service. Frank reintegrated that the height at 165 feet would be more attractive to the secondary and third parties to be housed on the tower and help protect the town from additional towers.

Ed Ferratto questions Mr. Ciolfi as to your past experience of putting up these towers has it happened in other towns that other companies put up their own towers. Mr. Ciolfi replied that there is a town to the north that because the zoning law is not written as well as yours that a competitor has been allowed to put up their own tower in close proximity to our tower. We are in the business to rent tower space, so we try to accommodate these other companies and we try to make our space as attractive as we can. We do not want this to happen obviously. Jeff asked if there were any further questions or comments, with none he asked for a motion to close the hearing.

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

Jeff reviews the options for actions with the board members. He asks the members whether they are prepared to vote on this issue tonight or to wait the 62 days as allowed by law. The majority of board members expressed the desire to conclude this application tonight. A discussion continued as to some conditions and stipulations to this variance: 1. to allow for above ground power and telephone lines from the road to the tower 2. to allow the 165 feet tower with the whip antenna at the top of the tower also allowed to go above this, free, in perpetuity to 911 and emergency usage. 3. Should the tower be unused for a 6

month period, it will be dismantled within an additional 6 month period or a penalty will be assessed 4. 25 feet surrounding the flagged Shad Bush shall remain protected.

Jeff reviewed that this application would be for a height variance of 165 feet, which is 40 feet higher than allowed by town law at the alternate location allowing for the 911 whip antenna to extend beyond, free in perpetuity to 911 and emergency usage. this variance would allow above ground power and phone lines from the road to the tower, with a 25 foot protective area around the flagged Shad Bush; and it will be dismantled within 6 month after it is unused for a six month period or a penalty will be assessed.

Jeff read the permitted actions for the board of appeals:

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:

i. Whether an 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: Yes, Leslie regrets that there will be some detriment to the view shed, especially to the people on the eastern side of the location. Jeff adds that there is no happy medium here, it is visible to some, but to many within the area cell service has become a necessity and it will be a great benefit to fire, & 911 responders. No matter where you put a cell tower somebody is going to see it and will be a betterment for the community.

ii. 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: Yes, Hilarie suggests to choose a different site. She adds that just because there is cell service, the 911 responders, in the area are mostly volunteer and that there will remain a delay in the responding time.

iii. Whether the requested area variance is substantial.

Answer: Yes, it is substantial. Leslie comments we do not necessarily want it but we need to balance it with the needs of the citizens. It is substantial to a very small group and that has to be recognized. The fire towers for example were not seen as a menace, and were much taller than this. Copake's fire tower was adored and visited by many, it was much taller than this and much more visible by many. Hilarie added that it is substantial, the pristine landscape of the area will be marred by a 165' cell tower.

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

Answer: Yes, there will be some effects. Frank adds that cell service is important for direct contact with the EMS personal to the doctors, after speaking with the EMTs, he is more aware of how 911 works and how cell service is vital to assist them in doing their job.

v. 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, but just about all of them are.

c. The Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Jeff asked for a roll call of votes: Frank; yes, Hilarie; no, Jeff; yes, Leslie; yes, Mike; yes.

Jeff announced that this variance will be granted. The Action Taken forms will be mailed to the applicant and will be on file with the Town Clerk. In addition the Planning Board will receive a copy for their file and record, and the maps will be dated and stamped.

Application # 2011-04, Mark & Lisa Nielson, Area Variance for a patio within 100 feet of Copake Lake on SW Colony Rd.

Ms. Nielson was present and came forward.

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

Jeff reviewed this application quickly for the board and clarified that the patio would be closer than the allowed 100 feet from the lake, he continued by reading the following correspondence pertaining to this application: The Columbia County Planning Board, The Copake Planning Board, NY DEC. He opened the Public Hearing and asked if anyone present wished to speak to this issue, and to please state their name and town for the record. Ms. Nielson passed out revised plans with the parking area moved back and the removal of the permanent grill. Jeff asked her about the parking area being moved back. The dimensions of the patio would be 20' x 20'. Frank stated that she needs a variance for the 60' from the water as long as the easements are protected. He continued to say that by asking her to move the patio back further we are losing site of the right of a property owner to the quiet enjoyment of owning property. Ms. Nielson also made mention that that this location was selected specifically because they would take advantage of a beautiful

oak tree in the area, and in that location there would be the least amount of excavation necessary.

Jeff questioned everyone as to whether there were any further questions. With no one coming forward, Jeff reviewed that this application would be to allow the applicant to build a patio of 20' x 20'. It will be located so as to protect the easements on both sides, and will be allowed to be 40' closer to the lake than allowed by law, no closer than 60' from the lake. It will be an open terrace with a walkway. The following stipulations will apply; any tent/canopy/or temporary structure will come down at the end of the season, the retaining wall is not to be higher than the patio, a silt fence will be added to protect the lake during excavation per DEC request.

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

Jeff asked if the ZBA members were prepared to vote on this tonight or wait. All responded that they were ready to vote tonight.

At this Jeff began to read the permitted actions for the board of appeals:

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:

i. Whether an 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: No

ii. 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: No

iii. Whether the requested area variance is substantial.

Answer: No

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

Answer: No

- v. 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, but just about all of them are.

c. The Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Jeff asked for a roll call of votes: Frank; yes, Hilarie; yes, Jeff; yes, Leslie; yes, Mike; yes

Jeff announced that this variance will be granted. The Action Taken forms will be mailed to the applicant and will be on file with the Town Clerk. In addition the Planning Board and the County Planning Board will receive a copy for their file and record, and the maps will be dated and stamped.

Application # 2011-06, Michael Smoyver, 75 Chrysler Pond Rd., Area Variance for setbacks.

Leslie makes a motion to open this Public Hearing, this is seconded by Mike. This motion carried, unanimously.

Jeff quickly reviews this application with the ZBA members. He read the correspondence that pertains to this application; The Copake Planning Board, and Floods Sanitation. He made note that Floods verified the presence of a concrete septic tank and that it is of 1000 gallon capacity. Jeff then opened the floor for questions. Hilarie asks as to whether this application is requesting a setback variance for just the one side, answer yes. Frank asks questions regarding the building plans and asks Mr. Smoyver for clarifications. Jeff asks if anyone in the audience asked to speak. No one responded, however Mrs. Smoyver asked about the building permit. Jeff explained that it would be good for a one year period and the variance if approved would go with the land.

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

Jeff asked if the ZBA members were prepared to vote on this tonight or wait. All responded that they were ready to vote tonight. This variance would be for a side yard variance of 35' reduced by 15' from the allowable setback distance of 50', to build an addition to the back of their existing house and this variance would be contingent upon Planning Board site plan approval.

At this Jeff began to read the permitted actions for the board of appeals:

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:

i. Whether an 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: No

ii. 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: No

iii. Whether the requested area variance is substantial.

Answer: No

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

Answer: No

v. 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, pretty much all of them are.

c. The Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Jeff asked for a roll call of votes: Frank; yes, Hilarie; yes, Jeff; yes, Leslie; yes, Mike; yes

Jeff announced that this variance will be granted. The Action Taken forms will be mailed to the applicant and will be on file with the Town Clerk. In addition the Planning Board will receive a copy for their file and record, and the maps will be dated and stamped.

Application # 2011-07, Paige & Michael Frawley, 1226 Lakeview Rd, Area variance, Lake setbacks.

Jeff reviewed the application that it is for an area variance for modifications to the existing house for lake setback and for both side yard setbacks. He continued to read the correspondence that pertains to this application, Copake Planning, and NYS DEC.

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

There was some conversation regarding the walkway to which Hilarie pointed out that according to 232.9.P open porches etc are excluded from this. Jeff declared the ZBA the lead agency and would refer this application to the Planning Board. Mrs. Frawley was questioned as to the lot coverage. according to 232, attachment 3 , under nonconforming lots, her property could not exceed 25% lot coverage. A discussion ensued as to whether a deck would be included. Frank stated that according to NYS Municipal law all shall be equal, decks should not be included in the lot coverage. Ed Ferratto, ZEO, pointed out to the board that under 232-3 Usable Square Feet includes porches and decks. Sandra Baptie, Architect for the Frawley's stated that the survey documents this parcel as .23 acres, according to her calculations lot coverage would be at 23% deck included. Jeff asks for a copy of the survey to document this.

Frank asks where they stand with the DEC application and makes mention of the DEC request for more information to complete their application. He requests that the ZBA wait for response from DEC prior to their going any further. Leslie asks what additional information was requested by DEC. Ms. Baptie responded that they needed another diagram of the proposed changes to the building, data on the septic tank, and proposed landscaping if any would be done. Frank stated that we would be unable to vote without the DEC permit. Jeff asked that the board approve leaving the public hearing open and asked the applicants to forward the requested additional information.

Leslie makes a motion to leave the Public Hearing open to allow for the additional information, this was seconded by Mike. This motion carried, unanimously.

New Business:

New Applications:

Application 2011-08, Camphill Village, Ring Road, Area Variances for setbacks.

- 1. Village Green, front yard setback.**
- 2. Greenhouse, set back from a body of water.**
- 3. Greenhouse, front yard setback.**

Application # 2011-09, Camp Hill Village, Ring Rd, Area variances for setbacks.

- 1. Village Green, set back from body of water.**
- 2. Implement Shed, set back from body of water.**

Ms. Alexandra Sloan, project architect and Ms. Jolanda Jansen, project engineer were both present to answer questions from the ZBA regarding these applications. The applications, plot plans and maps were all reviewed. Ms Jansen informed the ZBA that the 5 parcels currently owned by Camphill Village which will have the improvements are legally being merged into 1 parcel and will be filed with the County Clerk's Office. These applications before you now are all the proposed improvements.

Jeff read the letter from the Planning Board and informed the ZBA members that the Planning Board would be lead agency for this project. He also read the letter which was sent by our Attorney, Tal Rappleyea to Alex Sloan regarding the need for a special use permit.

Jolanda reported to the Board that Camphill Village was in the process of designing a 20 year plan of improvements. During this process it has become clear that some of the buildings were built without proper variances. We are attempting to get all into compliance, and in addition to the above listed applications she submitted a new application for the special use permit for the residential community. It is our belief, she stated, that this will put Camphill into compliance with the town.

Jolanda explained to the ZBA the time frame with the Planning Board and asked if all the applications could have their Public Hearing at the same meeting so that she and Alex would only need to attend one meeting. Jeff concurred that this would be best as all the notices to the abutters would need to be mailed the notices only once. It was the consensus of the board to schedule all 6 Camphill applications for Public Hearing for the September 22 meeting.

Frank asked permission to drive the area to do a site review, permission was granted however Jolanda asked that he call the office ahead of time to make the arrangements so as to not alarm the residents of the facility. Some of them are not used to visitors, please drive slow.

Application # 2011-10, Hope Barringer, 7441 State Route 22, Special Use Permit for a farm stand.

Hilarie made mention that the use permit for this type of activity may not be necessary under the Ag & Market clause of the zoning law. Jeff and Frank questioned this as a similar application came before the ZBA and the special use permit was required. Jeff will contact attorney, Rappleyea regarding this issue.

Leslie added that she the chair of the Economic Advisory Committee is pleased to see this type of application and volunteered her committees assistance. We encourage this type of business for Copake and we can do all kinds of things to help and support you.

Leslie makes a motion to accept this application and to schedule it for Public Hearing pending the concurrence of Tal & Hilarie for September 9, special meeting, this was seconded by Mike. This motion carried, unanimously.

This application would need to be referred to NY DOT, Copake Planning, Columbia County Planning, and the Town of Ancram.

Application # 2011-11, Marc Szafran, 2159 Cty Rt 7, Copake, Area Variance to replace front yard fence with a taller one.

Marc Szafran came forward to answer questions and to explain his application. He stated that his application was for replacement of a front yard fence. It would be located in the same place, but the height would be increased from 4' to 6'. He showed photos of the proposed fence the top of the fence is an open design. The distance from the yellow line of the road to the fence line would be 24', and 10' from the house. The house is very close to the road which is why we want the higher fence. The property is unique because Cty Rt 7 goes right through my property, the house is on the lake side the remaining property across the street.

Frank asked if it would be within the County right of way of 60'. This application would need to be referred to the County Highway for their input. Jeff added that it would also need to be referred to the Planning Board.

Leslie makes a motion to accept this application and schedule it for Public Hearing for the September 9 meeting, seconded by Mike & Frank. This motion carried, unanimously.

Old Business:

None

Adjournment:

Leslie made a motion to adjourn this meeting, this was seconded by Hilarie . The motion carried. The meeting adjourned at 10:00 PM.

A special meeting will be held on Friday, September 9, 2011, at 7:00 PM.

The next regular meeting will be held on Thursday, September 22, 2011, at 7:00 PM.

Respectfully Submitted,

Theresa A Traver, Recording Secretary