

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

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, July 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, Frank Peteroy, Dustin Bessette, and Hilarie Thomas. Anthony Buono, sitting in for Town Attorney, Tal Rappleayea, was also in attendance. An audience of about 60 were present including, Marcia Becker, Planning Board Chair.

**Minutes:**

*Frank made a motion to waive the reading and to accept the June 23, 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, 7/13/11(Cell Tower)
- B. Copake Planning Board Minutes, 7/13/11(Camphill Village)
- C. Copake Planning Board Minutes, 7/13/11(President's Estates)
- D. Copake Fire Company No 1, 7/28/11 (Cell Tower)
- E. Copake Fire District, 7/28/11, (Alice Belt Pond)

**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 setbacks and height.

Jeff made note that one of the abutter property owners, Habitat for Humanity, public notice letter was returned for incorrect address. Mr. Christopher Ciolfi, Development Officer for Mariner Tower, informed the board members that once Jeff had notified him of this, he personally went to the property owner for notification. Jeff responded with the advice of the attorney, that for the purpose of the public hearing this was not adequate, the

letter would need to be reissued. Teri informed him that the address from the tax roll was not the same as that from the Assessors' office. The Public Hearing could not be closed waiting for additional information from the Planning Board. The Planning Board is lead agency and they have consulted some experts from a Radio Frequency Engineer, and from a Bio-Diversity Adviser. Jeff advised the members of the audience that for anyone wishing to speak, they need to state their name, and address. Please be courteous, and limit your remarks to two minutes.

*Frank made a motion to open this public hearing, seconded by Mike. This motion carried.*

Jeff read the correspondence from the Planning Board pertaining to this application. He asked Ms. Becker, Planning Board Chair when will the advice from the team of experts be available for the ZBA review. She responded that this information would be available for review by the next meeting.

Mr. Ciolfi came forward with a brief presentation for those present. He briefly began with back ground of the proposed location and town law requirements. Copake law requires that any cell tower needs to be at minimum 1500 feet from an existing residential structure and a maximum of 125 feet tall. It is proposed that at the location site on the property of Ezra Link for the tower to be placed near the wooded area, but within the 1500 ft setback and for the tower to be taller than the 125 ft. The proposed height to be 150 ft, for which AT & T, a main tenant on the tower, would be able to provide better coverage for this area. He also stated that emergency management would be placed at the top of the tower at no charge, to improve their signal for the responders working within the area as well. He addressed the concerns expressed by ZBA members to stay within the 1500 ft setback area. He stated that by doing so the tower would need to be about 18 ft taller because of the ground level. He showed charts and graphs of the both areas to show how much the coverage would improve. The conclusion that either location would greatly improve the coverage for the Copake area.

He handed out packets of information regarding the results of the balloon float test. He also showed the photos taken with a 55 mm lens of the results of the balloon float tests at both locations. A black balloon was floated at the originally proposed location within the 1500 ft setback and two red balloons at the suggested location meeting the setback requirement. One balloon was at 150 feet in height and one at 165 feet to give some sense of the visual impact of the proposed tower. The black and red balloons were about 400 feet apart. The balloons were most visible from the south of the site around the Snyder Pond Road and High Meadow Road areas. He stated that the suggested site remaining within the 1500 foot setback would appear taller as it has changed the site line. He also showed photos of the proposed tower structure using photo shop inserted at the location of the balloons for a better sense of what it will look like. The tower would be a lattice style, stating that this style would be of the most useful for future use. He continued that the tower was scaled to size when it was superimposed into the photo.

He reviewed the coverage charts for those present, showing that currently the balance of the Town of Copake has poor signal coverage. The new tower would improve coverage. Is

the height justified or not? The signal would be best at the original location site. You need to balance the height and location against the future needs for coverage. Mr. Ciolfi continued that some coverage would be coming from the existing tower that is on Catamount and that the Craryville tower would be going on line in the very near future. He stated that the planned coverage chart is for the Ezra Link property from the original location at the 150 foot height. The new location to increase the setback to the 1500 foot setback would change the coverage some but not significantly. Hilarie cautioned that although coverage would improve for some, the service agent is AT &T and that there would remain some dead zones. Mr. Ciolfi did say that other companies receptors would be placed lower on the tower and that you do lose some signal strength because of it. Someone asked if coverage could also be lost due to the leaves being on the trees. He responded that leaves on or off the trees could interfere some.

After the ZBA members had asked all their questions Jeff opened the meeting for public comment, but cautioned that all would need to keep it civil. Jeff read the letter from the Copake Fire Company No. 1 signed by Copake Fire Chief, John DeRocha. In the letter were expressed concerns about the lack of reliable cellular service and how this impedes their ability to respond to emergencies. He also reminded the ZBA that as with all modern technology it is very much internet based and dependent upon a strong cellular signal.

Al and Carmela Biondi, Copake asked about the procedure and process to get this tower approved. It is important to get cell service in this area. How long will it take? We need that cell tower. It is frustrating that this potential for improved service to cellular service could take so long.

Hilarie asked what if this tower were to be placed on the hill behind your house, not everyone shares your opinion we need to balance everyone's opinion. The Biondi's responded "let them do it, we need to get it done" .

Jeff explained the process and that this Public Hearing would not be closed today. He continued that the Mariner Tower was before the ZBA for two variances needed before the Planning Board can proceed. It could take a while, we need to go through the process and balance what is best for the Town, while addressing people's concerns, and staying within local law. Leslie added that we will hear all arguments both for and against. These will be documented within the minutes and the ZBA will take all this into account when making a decision. Jeff added that the decision is made by a legal balance of five major points not by majority rules. The attorney, Anthony Buono also added that the quickest way to get something accomplished is the legal and correct way or it could be tied up in the court system for years.

Barbara Gallicano, Copake expressed that she supported the cell tower. We had no cell service when we had car trouble along the road in winter. It is a very dangerous situation, in many areas of our community there are no houses, we are older people we had to walk a distance before we could get to a phone.

**Carol Allen, Copake Lake, I am a neighbor of Mr. Link. I have worked as an electrical engineer for years, I would like to calm anyone's fears for radiation from this tower. I have no concerns regarding this tower being constructed as a matter of fact we support it.**

**Rocco Reggi, Copake, Also is in support of the tower. He added that perhaps there is another plus to the construction. Now the electric company will have more of an incentive to restore the power to our area. We tend to lose power in that area anytime the wind blows more than 40mph, last year after the ice storm we were without power for close to two weeks.**

**Suzanne Allen, Copake Lake, I am supporting the cell tower. We have very poor service from our land line, it often takes Fairpoint Communications days to respond.**

**Ed Horwitz, Copake asks does anyone here object to this tower? It looks like the majority in this room are in support.**

**Joe LaPorta, Executive Director Community Rescue Squad explains to the group that the rescue squad uses the GPS in their phone system to locate addresses for emergency responding. He continued there is currently no signal for its' use in the Copake Lake area and there is very limited signal for cell use for the responders to speak with Doctors/Hospitals. He introduced a rescue squad member of 20 years, Lou. Lou shows all those present the life pack 12. When responding to a 911 call this piece of equipment is vital. It is used by the paramedic to send an EKG directly to the hospital for " on the spot advice" from a doctor on duty. It can be referred directly to a cardiologist at Albany Medical Center if necessary. It uses a cell phone/Bluetooth type signal, without cellular service there is no signal. 3/4 of the Town of Copake has little to no signal. Many times we need to go outside the area to get a signal to talk to a physician. If we use a landline many times it is not in the same room as the victim, time wasted can be vital.**

**Hilarie stops him by asking if they use AT&T, that will be the prime carrier for this tower. Lou answered that many of us use our own cell phones we use the carrier that gets the best reception within the area. Mr. Ciolfi added that I am sure AT&T will very likely be receptive to switching your plan.**

**Peter Reed, Copake, I am an abutting property owner. I wanted to address a couple of things with the primary proposed location of this tower. If the variance is granted for the setback this tower will be located within three hundred feet of my property line, and about 1200 feet from my house. During the balloon test, I could see the balloons from various areas of my property. Although I could not see the balloons from my house at this time, I am sure that once the leaves are off the trees I will be looking at it. I would prefer the tower to be farther from my residence than closer.**

**Hilarie asks if it were possible to provide some photos of the area without leaves on the trees of the site that was superimposed with Photoshop inserting the proposed tower for a better idea how visible it will be. Mr. Ciolfi said he would attempt this, but reminded them that trees grow and what is visible now may not be visible in two or three years.**

Jeff reminded him that Leslie had brought up that concern of this tower being within the 1500 feet of his residence. He continued that the ZBA will take this into consideration when it is time for a decision.

Attorney Carl Whitbeck representing Mr. Reed commented that both the public and the ZBA board needed to be aware of some issues. Copake law doesn't allow the tower to be placed at this proposed site without a variance, hence the request for a variance. The questions that this board needs to focus on are the town's cell tower law, and the provisions that allow for variances within the zoning law. Also the Planning Board is lead agency and therefore will be doing the SEQRE ( State Environmental Quality Review), experts have been contracted but as of yet there has been no information from them. The ZBA cannot make a decision without this information, all those things need to taken into consideration.

Jeff responded that the ZBA would not be closing the Public Hearing at this time and that no decision would be made tonight. He added that the ZBA can, when ready, make a decision pending Planning Board approval. Our attorney will investigate the cell tower law that you referenced.

Robert Roth, Town of Ancram, Our committee has started this process to get better service to Ancram. AT & T is the only company that has agreed to pursue the possibility of putting up a tower within our town to improve service to our residents. No other company would even consider the initial investigation. AT&T has encouraged Mariner Tower to pursue this.

Jeff interjected by saying that this will have nothing to do with our decision making. The tower is owned by Mariner Tower, AT&T will be a tenant of this tower. The money that is spent by either company is irrelevant to our decision making. We will follow the rules and regulations as set by our Town law when it comes time to making our decision as to whether we grant this variance.

Hilarie adds that some of you think that cell phone service is going to immediate and it will be wonderful coverage once this tower is constructed. I lived in the Los Angeles , CA area for many years where there are many of these towers. There are dead zone no matter what, it is a possibility that you will not have coverage where you live. We need to hear and consider all points of view. Mr. Reed will probably be most affected by this tower. We do not know what it will do to his property values.

Harvey Weber, Copake spoke of the importance of getting cell service to the area. We need to consider its importance to humanity in those cases of emergency. *He cited a rape crime which had taken place in which there was no cell service for the victim's cell phone.*

Amy Shadic, Copake, I am also an abutting property owner and I am supportive of this tower. During the ice storm of this last spring, I not only had no electricity but I also did not have phone service from the landline. What if there was an emergency, I have to drive around to find a spot for cell service. It's ridiculous.

**Hilarie spoke, we have to consider all aspects of the affects that this tower, we can not only think of health and safety issues.**

**Jeff added that the ZBA takes all legitimate factors into consideration. All aspects need to be considered.**

**Attorney, Buono spoke up and explained that there are balancing factors set forth by law that need to be considered when making a decision for a variance. Considerations are the benefits to Mariner Tower against the detriments to the neighborhood and community. Any undesirable changes are considered, substantial or not. What the impact of the neighbors and district will be, and whether are some other methods to achieve this with minimum variances. Your town laws, and the second location all need to be considered by this board. Will it improve the value of homes in the area by improving cell service or will it have the opposite affect because it is visible from your property. The Town cell tower went into effect in 2001.**

**To this Mr. Allen made comment that this law is ten years old, a lot has changed in 10 years both with concerns for radiation and technology. What sort of study was done to come up with a 1500 foot setback.**

**There then began a discussion of the setback variance request for the tower to be constructed within the 1500 feet allowed of Mr. Reeds residence. There have been suggestions to changes to this law. Mention was also made of the Copake Comprehensive Plan being incomplete and suggestion that all be left as is until it's completion.**

**Donald Shadic, Copake, made mention that according to a recent survey of real estate agents, sales of homes are not hindered by cell towers. They are however, supported by good cell service.**

**Diane Shadic, Copake, made mention that a cell tower was no more unsightly than electric lines and poles or bill board signs. They are a by-product of progress. I am in support of this cell tower, we need better service.**

**Mr. Whitbeck again announced that this application is for a variance of the Town's law.**

**Attorney Buono interjected that the ZBA also needs to look at the Health and Safety issues. He adds that the way the Town's law is written it discourages co-location.**

**Mr. Ciolfi made mention that for the propagation coverage area, AT& T and Verizon are very similar. He continued that Mariner Tower is willing to withdraw the requested variance for the setback and re-locate the tower at the second location outside the 1500 foot setback. The remaining variance for height would be for 150 to 165 feet. We are willing to work with Mr. Reed to move this application along. We are trying to provide the town with a tower that will provide the best possible coverage for cellular service.**

Attorney Buono stated that this withdrawal of one variances will need to be in written format, and an amended application will need to be received from the applicant.

Jeff asked if there were any further questions or comments from the board members or the public. Being none he announced that this Public Hearing would remain open and would continue to the August 25th meeting.

### New Business:

### New Applications:

Application # 2011-04, Lisa & Mark Nielson, SW Colony Rd, Copake Lake, Area Variance for a retaining wall and patio within 100' of the lake.

Ms. Nielson was present and came forward to answer questions from the ZBA. Jeff made note that this was not a non-conforming lot nor a corner lot as indicated on the application form both corrections were made. Prior to the Public Hearing we need to have an exact distance from the front line of the wall corner. This is a vacant lot divided by SW Colony Rd.

Ms. Nielson passed out a new plot plan with the setback distances clearly marked out as requested by the ZBA. A discussion of why the parking area would be so large and suggested that by eliminating the parking the proposed patio could be pushed back from the lake to 80 feet, rather than the proposed 60 feet to the lake. The discussion continued as to whether an accessory structure could be allowed on this property as there is no main structure.

Leslie asks by definition a patio is considered an accessory structure, but this is not a structure so technically what is it. Frank stated that he did not consider the patio an accessory to anything, it is simply a landscape improvement to the property. This is a residential property and may not be anything else. A patio is a normal extension of that use. Any tent setup must be taken down at the end of the season. Leslie asks whether the patio would impede on the 15 foot easements on both sides of this property. Ms. Nielson replied no it would not. Frank added that the two access easements must be completely clear for the entitled neighbors. The ZBA does not have a right to change that and it has an obligation to include it "clearly" in any approval process to protect the public. Making this property improvement any more than it is, in my opinion, is denying the owner of the "quiet enjoyment of property" which is a Constitutional Right of Property Ownership. Ms. Nielson was questioned that the parking lot may impede on the right of ways. The attorney was asked about the legal ramifications of this and his response was that it all depended upon the language that was written in the deeds.

Leslie made note that the retaining wall of the proposed patio could infringe on the right of ways. Jeff poses a question to the attorney, the board, and applicant, that a permanent

built in gas grill changes the nature of the structure does it not? He made mention that no other case like this that come before this ZBA board. He asked the advice of the attorney. He asked for a clarification of what it is according to 232 code.

Leslie asked Ms. Nielson to provide the distance from the parking area to SW Colony Rd and to include the width of this parking area. The lake to end of the patio, all distances need to be clearly marked. She was also asked to provide the ZBA with an explanation of what in her opinion this patio is according to zoning law.

*Leslie made a motion to accept this application as complete and to schedule it for Public Hearing, this was seconded by Frank. This motion carried, unanimously.*

Jeff announced that this would be scheduled for the August 25, 2011 meeting and that it would need to be referred to the following: The Copake Planning Board, DEC, and The Columbia County Planning Board.

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

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.

Jeff read the letter from the Planning Board and informed the ZBA members that they would be lead agency for this project. This is a referral from the Planning Board.

Johanna 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.

Jeff reviewed the list of buildings and the year that they were built. It was determined that the Village Green, variances from the road setbacks and from the setback from the stream; the Greenhouse, there would be two variances needed setbacks from roads and water and an implement shed, setbacks from the stream, were those buildings requiring variances. However Jeff upon reviewing the list pointed out that some that were termed "grandfathered" were actually built after adaption of the code in 1972. The group determined that two additional variances would be needed. Ms. Jansen stated that these applications would be forthcoming in time for the August meeting.

Leslie asks about the state of this application in relation to their Planning Board application. Ms. Jansen replied that it is not yet determined complete. Even if we called for a Public Hearing in September, it would be timely for the Planning Board schedule. It was agreed that the additional applications would be submitted for the August meeting.

Frank asked if DEC would need to issue a permit because of some of these building proximity to the stream. It was determined that the Army Corp and DEC have flagged

some wetlands but not in this area. Permits would not be required we will not be disturbing the stream, nor are we building a septic system.

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

Mr. & Mrs. Smoyver were present to discuss their application with the ZBA. It was determined that this piece of property is not on the lake. Jim Dunn, a friend will be working with the project engineer.

It was determined that this 4 acre parcel, with the original house was built back in the 1970's. They plan to add to the existing building, will not increase the number of bedrooms, and will remain a single story house. They will be asking for a side yard variance. It is a non-conforming building, the addition would increase its non-conformity.

The addition will create a master bedroom, and use a very small existing bedroom as the connecting hallway. It would remain a 2 bedroom house. Hilarie asks why can't you build into the front yard rather than building into the side yard. It was explained that the reasoning is to continue the line of the roof also to retain a large fireplace. Their plan also would allow for an access to the full basement from the outside of the building for storage of lawn equipment as well as from within for the placement of a washer & dryer. The side neighbors house is about 200 feet from the boundary

Frank asks for a survey to show the location of the well and septic. He also asked for a copy of the deed of the property as the survey shows a much larger parcel prior to its subdivision. Is the well 100 feet from the septic. It was determined that it is about 75 to 80 feet apart. Frank asks if the water was ever tested. The water quality test was done 9 years ago at the time of the purchase. The well was drilled by Eastern States Well Drillers. When asked about the septic tank, it was determined that this is not a concrete tank and has not been pumped since they owned the property. Frank suggests that they find out what they have before they go any further and made mention that this could be a requirement of the Planning Board

*Leslie made a motion to accept this application as complete and schedule it for Public Hearing. This was seconded by Mike, the motion carried, unanimously.*

Jeff announced that this application would need to be referred to the Planning Board. The Public Hearing is scheduled for August 25, 2011.

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

Sandra Baptie, project architect as well as Ms. Frawley came forward to answer questions and review this application. The plot plan and drawings were reviewed. It was determined that the greenhouse/sunroom was built back in the 80's. The Frawley's purchased their house in 2006.

Ms. Baptie reported that the greenhouse would be removed, and an addition will increase the dining area. A deck with stairs to replace the current spiral stairs will be added to the side lot.

DEC application has been submitted they are awaiting the reply. It was determined that this is a non-conforming house and the addition will increase its non-conformity. The deck and stairs will further encroach into the side yard by 9 inches and the addition will be 3 feet closer to the lake. This parcel is a 10,000 sq ft lot. With the addition to the existing building it was calculated that there is 25% lot coverage. Ms. Baptie pointed out what was existing and what would be the replacement in the drawings to clarify the application for the ZBA members.

A discussion ensued as to whether there had ever been a building permit issued for the sun room. It will be investigated. When there were no further questions, Jeff asked for a motion.

*Leslie made a motion to accept this application as complete and to schedule it for Public Hearing, this was seconded by Frank. This motion carried, unanimously.*

Jeff announced that this application would need to be referred to the Planning Board as it is an increase in non-conformity. The Public Hearing is scheduled for August 25, 2011.

**Budget Request by The Town Board:**

A discussion ensued regarding the returning the allotted money for the budget of the ZBA being returned to the Town to assist with its shortage. Jeff reported that the Town Board is requesting a 3 % reduction. Jeff announced that there was \$ 200 remaining in the equipment fund, \$ 600 remaining in the training fund, and \$ 200 from the secretary hours. This total comes to \$ 1,000.00 that could be returned to the Town.

**Old Business:**

None

**Adjournment:**

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

**The next meeting will be held on Thursday, August 25, 2011, at 7:00 PM.**

**Respectfully Submitted,**

**Theresa A Traver, Recording Secretary**