

# **Town of Copake Zoning Board of Appeals**

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## **Meeting Minutes of February 25, 2016**

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The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on February 25, 2016, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of 10 was present as well as, Stanley Gansowski; Town Board liaison, and Bob Haight; Planning Board.

### **1) Roll call:**

The meeting was called to order at 7:10 PM by Jon Strom.

Present were, Frank E. Peteroy and Hilarie Thomas.

Kenneth Dow; Copake Town Attorney

Michael Diperi and Jeffrey Judd were excused.

Veronique Fabio: Secretary was present to record the minutes.

### **2) Reading and approval of the minutes of preceding meeting:**

The approval of the January minutes is postponed to the next ZBA meeting.

### **3) Correspondence:**

The following correspondence was reviewed;

From Ken Dow in ref. to evaluation of Ben Meir draft EIS

From Guy Winig in ref to 2015-15 Konsker. Permit modification & hold harmless letter.

From Frank Peteroy; article from the Daily Signal.

From Bill Gregory Highway Superintendent in ref. to 2016-01 Quick Stop.

From Jeffrey Judd 02-11-16 cannot attend the meeting of Feb. 25.

From Town Board, Workshop for changes in zoning.

From Michael Diperi 02-23-16 might not be able to attend the Feb. 25 meeting.

#### **4) New Applications:**

##### **1) 2016-02 Keifer/Freshman, Southwest Colony Rd Tax Map 165.14-2-7 & 165.14-2-8**

~ Jon Strom noted that this is a new application, variances were granted on the same project in 2014.

~ Linda Chernewsky represents the owners. She explained that a minor change is necessary to allow the construction crew easier access to the lot. A variance of 2.4 feet on the left side of the property is requested to make the house more parallel to the road. Linda indicated that the neighbor on the left side had no concerns with the change and he had written a letter to this matter.

~ Frank Peteroy noted that the house was lower by one foot than on the 2014 plan. He asked Linda if the house will have the same profile, Linda responded positively.

*~ Jon Strom asked for a motion to accept the application for a public hearing, March 24, 2016, Frank Peteroy made the motion, Hilarie Thomas seconded.*

##### **2) 2015-17 Wilmer, 121 Golf Course Rd. Tax map 165.05-01-05**

~ Gray Davis represents the owners Ellen Wimer. He explained that Ellen wants to build a 10'x 36'x 5' deep lap pool.

It will be located within 100 feet of Copake Lake, therefor the need for a variance. No trees will be removed and a fair amount of landscaping will be added as well as a self-closing gate. An existing fence surrounds the property.

The pool will be flush with the deck on the house side and 3' above grade on the lake side with a blue stone finish. The project will be located 44'.11" from the edge of the lake.

~ Frank Peteroy asked if a DEC permit was applied for.

~ Gray Davis said that a DEC permit was determined to be unnecessary by the building code enforcer that was in charge at the time of filing the application.

~ Jon Strom inquired about the height of the fence that will be surrounding the pool.

~ Gray Davis indicated that the existing fence will remain as is on the lake, left and right side. The fence on the front will be adjusted.

~ Gray Davis indicated that the fence will be between 5 feet tall in the front.

Because of the height of the fence exceeding code, an additional variance will be necessary for the front.

~ Jon Strom express his concern for the safety of a child that would be for example in the house.

~ Gray Davis responded that there are contacts on the back doors leading to the pool that can be adjusted in order to make it safe for children. Owner is presently talking with her alarm company. There are no other guide lines besides the pool being completely fenced in and doors alarmed.

The deck is 18 inches from grade on the house side, the pool will be at that level.

The pool will be heated and have an automatic protective cover as well.

*~ Jon Strom asked for a motion to accept the application for a public hearing, March 24, 2016, Frank Peteroy made the motion, Hilarie Thomas seconded.*

## **5) Public Hearing:**

### **1) 2016-01, Gary Singh/ Rubin Quick Stop, 1682 County. Rt. 7a, Tax Map# 187.1-1-52 & 187.1-1-51**

Area variance to allow a gravel parking lot.

*~ Jon Strom asked for a motion to open the public hearing, Hilarie Thomas made the motion, Frank Peteroy seconded.*

~ Accompanying Gary Singh the applicant were Kevin Thiemann; Attorney and Daniel Wheeler; Engineer.

~ Jon Strom mentioned the Planning Board recommendation for the gravel driveway.

~ Jon Strom read the February 12, 2016 letter from the highway department. It indicates that a site visit was done and it recommends;

1) That the fence on Empire Rd. is to be replaced in a way that will not obstruct the sight distance to the south.

2) That the applicant should insure that no additional storm water runoff will drain onto Empire Rd.

The County Planning Board was sent a letter in reference to the application, there was no response from that board.

~ Daniel Wheeler gave details about the parking area finish, the contours will be graded accordingly, and the water runoff will be kept on site. It is the responsibility of the owner. The only area that will be gravel is the parking lot at the back, asphalt will be used in the areas near the front of the property towards the clock and on the side towards the Sunoco station.

To respond to the highway department's concern, Mr. Wheeler indicated that a chain link fence is planned on Empire Rd. in order to keep visibility.

~ Jon asked how the water will be prevented from flowing onto the adjacent properties.

~ Daniel Wheeler explained that the gravel is permeable and the ground will be graded in order to keep the storm water on site.

~ Frank Peteroy has questions about the location of the property line on the north-east side, Gary Singh noted that it was 3' beyond the building.

~ Wayne Miller a neighbor at 617 Empire Rd. indicated that he was in favor of the gravel parking lot as well as Mrs. Rosa Lazcano and the resident at 625 Empire Rd.

~ Bob Haight asked details about the type of material that will be used. Wheeler responded that it will be "open graded finish" that allows water to flow through.

***~ Jon Strom asked for a motion to close the public hearing, Frank Peteroy made the motion, Hilarie Thomas seconded.***

***~ Jon Strom indicated that the ZBA had 62 days before rendering a decision, but he believed that the members will be able to make a decision tonight.***

Jon Strom proceeded to read the 267-b Permitted action by 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:*

*1; 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*

*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: NO*

*3; Whether the requested area variance is substantial;*

*Answer: YES*

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

*Answer: NO*

*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*

*c. The Board of Appeals, in the 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.*

Tonight the ZBA is voting on an area variance for:

Relief from article V section 232-11D that requires that parking areas for more than 5 cars be paved with concrete or asphalt.

Roll call vote: Frank Peteroy;YES Jon Strom;YES Hilarie Thomas;YES

Variance granted

## **6) Closed Public Hearing:**

**2015-01, 2015-02, 2015-03, 2015-04 .Owner, Allon Ben Meir, Upper Rhoda Pond. Special Use Permits.**

Mr. Paul Freeman was present as well as Aaron Depaolo.

~ Jon Strom indicated that Ken Dow had sent to the ZBA members the state regulations to evaluate the adequacy of the EISs.

He summarized the guide lines;

- \* The adequacy of the scope and content for public review and public hearing.
- \* Relevant and material facts have to be included however not more detailed than appropriate, not encyclopedic, proposed actions, purpose, public need, benefits and social economic considerations also have to be taken into account.
- \* A concise description of environmental setting, short, long term and cumulative impacts has to be included.
- \* What can't be avoided or unmitigated, description of mitigation measures and a review of reasonable alternatives.

~ Jon Strom went page by page through the EIS received January 20, 2016 and pointed out the issues raised by some of the wording and the statements written.

\* Page 3, the wording "boarding house" is used and it has been a point of argument before. A lengthy discussion between Ken Dow, the attorney for the applicant and the ZBA members followed on that subject.

It was suggested that it should be listed as a tourist house instead of a boarding house.

\* Still on page 3, Jon went on "The rental of the subject property does not constitute a business use or activity."

~ Freeman stated that the rental purpose is to set off the cost of carrying the properties, it does not constitute a business as no income is generated.

\* Page 4, "Higher rate of use between Memorial day and Labor day."

~ Jon Strom noted that at this time it is probably used 100% of the time instead of as stated 20%.

"Maintain ownership of the properties until the Ben Meir children are able to occupy and enjoy the properties."

No dates are determined for a takeover of the properties by the children.

"The carrying cost the properties are creating a financial strain on the applicant."

\* Page 5, "Increase in the number of tourists visiting Copake will enhance economic growth and development."

~ Jon feels that it is a statement made without evidence.

\* Page 6, “It is undeniable that Copake lacks sufficient motel and hotels.”

\* Page 7, “Revitalization and rehabilitation of downtown Copake will be fostered by the approval of boarding houses.”

\* Page 8, “Small scale retail stores, services and commodities needed for day to day living.”

\* Page 9 “Proposed boarding house will have much less dramatic impact because of their proximity to the center of town.”

~ Hilarie Thomas suggested a revision of the following sentence “The establishment of a boarding house at the subject property will create tourist amenities and lodging in close proximity to the “downtown” economic heart of Copake “

“Secondary home owners will be better able to keep and maintain the cost of their overburdened homes.” Not a useful comparison in Jon’s opinion.

\* Page 15, “Any skepticism concerning the effectiveness of the proposed mitigating measures is unfounded.”

~ Jon questioned the logistics of controlling multiple group rentals. He also disagree with the statement on paragraph 3 “properties rented simultaneously less than 20% of the year.”

~ Freeman noted that the rental personnel will put its best effort to “control” the group number and the impact of the occupants on surroundings.

\* Page 16, “The applicant’s agent live in close proximity of the subject premises.”

~ Jon pointed out that variances go with the land and that fact cannot be guaranteed in the future.

\* Page 18, “Property rented 20% of the year” Not an accurate point.

Frank Peteroy argued that nothing can prevent the rental to go to 50% or more.

\* Page 19, “The majority of the single family dwelling located in the community are seasonal vacation homes...when the properties are not vacant, many are frequently occupied by family members and friends of the homeowners. This creates a transient quality to the community.”

Jon commented that transient occupancy by code qualifies only the houses that are being reviewed right now.

\* Page 20, the sentence “There is not a substantial likelihood that renters will have a lack of respect for the neighborhood” contradicts all public statements.

\*Page 21 and other pages as well, “Hundreds of people have access to Upper Rhoda Pond” is a deceiving point of view.

\*Page 22, “Property will only be rented for a minimum of 7 nights stay “if this is actually implemented that statement might have an impact on the outcome for the applications.

\* Page 23, “Quiet residential neighborhood” is what the subject area is all about.

\* Page 25, “In applicant’s position there is no reasonable alternatives to the establishment of a boarding house.”

~ Jon feels that without proof of the existence of a financial burden that statement cannot not be supported.

It was suggested that a review of the applicant’s financial situation might be useful.

\* Page 27, “While Applicant would be willing to rent premises on monthly or seasonal basis, such rentals are much harder to procure. If the properties are not rented, applicant will not be able to offset the associated carrying costs.”

~ Jon feels that the door is opening there for checking on the financial situation of the applicant.

~ Jon Strom recommends holding a public hearing.

~ Mr. Freeman will take in consideration the remarks and corrections suggested when the EISs are reworked by his office.

~ Frank Peteroy does not agree at all with the executive summery.

~ Ken Dow indicated that 8 issues had to be taken in consideration by the ZBA, traffic was not part of the list.

~ Frank Peteroy added that the comprehensive plan is being misconstrued in term of boarding house permitted locations. Permitted zones refers to center of town & highway business.

The Comprehensive plan did not imply that a boarding house class was acceptable in a single family residential zone. He feels that interpretation of the comprehensive plan is pushed beyond its limits. Frank Peteroy disagreed with the

notion that the rentals will not have an adverse impact on the neighborhood. He also has some issues with the traffic study and noted that Betman Lane was not included in the traffic study of 22 Howard Drive, and that it should be. It is the only surface access, the only way to get to Howard Drive from Cty. Rte. 7, excluding water/air. Frank added that it is very significant since it is about ten feet wide, a much unimproved dirt road, is deeply ditched on both sides, and cut through a known wetland. The traffic study is part of exhibit "E" for 22 Howard Drive, and as a result, it is fundamentally faulty by the exclusion of this connecting road.

A discussion went on about the interpretation of the town code.

~ Ken Dow indicated that it has to be determined if the reviewed draft is ready to be made public.

A notice informing the public of the availability of the updated EISs will be posted in the newspaper 14 days prior to the hearing (march 10). The abutters do not have to be notified.

The public will be able to make comments at the Mach 25 meeting, and a vote could possibly take place in April.

*~ Ken Dow asked for a motion to accept the EISs for adequacy for public review subject to modifications discussed tonight, Hilarie Thomas made the motion, Frank Peteroy seconded, all in favor.*

### **Internal business:**

Jon Strom and Frank Peteroy will be attending the workshop on change to zoning by the land use review committee on the 21<sup>st</sup> of March.

*~ Jon Strom asked for a motion to adjourn the meeting, Frank Peteroy made the motion, Hilarie Thomas seconded.*

***The meeting was adjourned at 9:00.***

**Next meeting March 24, 2016**

Respectfully submitted. Veronique Fabio, Recording Secretary.

