

# Town of Copake Zoning Board of Appeals

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## Meeting Minutes of June 23, 2016

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The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on June 23, 2016, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

Stanley Gansowski; Town Board Liaison was present as well as the applicants scheduled for the meeting. An audience of 10 was attending.

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

The meeting was called to order at 7:05 PM by Jon Strom, ZBA Chairman. Present were, Frank E. Peteroy, Jeffrey Judd, Hilarie Thomas and Michael Diperi. Kenneth Dow; Copake Town Attorney was attending as well. Veronique Fabio: Secretary, was present to record the minutes.

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

The May 26 minutes 2016 were approved.

### **3) Correspondence:**

The following correspondence was acknowledged;

5/31 from Marc Gross in ref. to Ben Meir.

6/02 from Grace Vinson in ref. to Mid-Hudson water shed.

6/07 from Ken Dow, draft on final EISs.

6/16 from Konsker Permit modification letter from NYSDEC/USACE.

6/17 from Rochelle Edelson in ref. to Ben Meir.

6/18 from Jeff Nayer in ref. to Zoning Revision Workshop.

6/19 from Marc Gross/ Peter Evans.

6/19 from Jeff Nayer in ref. to mistake on zoning map.

6/20 from NYSDEC about EIS on line.

6/21 from Jeff Nayer Town hall will be closed on July 2<sup>nd</sup>.

6/22 from Planning Board in ref. to LaConte application.

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

##### **1) 2016-05, Sefket Metjajic, 24 Hedges Rd. Tax Map 155.18-1-19**

Rear and side yard setback for construction of a 2 car garage.

Linda Chernewsky came to the table, she represents the owner, Sefket Metjajic.

Linda explained the reason for the appeal to the ZBA; Mr. Metjajic wants to build a 2 car garage and the right and rear setbacks cannot be met, 232-8-D (4). The reason for the choice of location is that the septic system is on the opposite side (left) of the existing house. Also, one of Mr. Metjajic' neighbor has a hot tub and building the garage in that particular location would give everyone more privacy. The gravel driveway leading to the proposed garage already exists, it will just have to be extended a little farther back.

The garage will be a 26' x 28' one story structure with a gable roof, the distance between the back and the right side property line would be 5 feet.

Linda Chernewsky noted that she had spoken to Lee Heim the building code enforcer and he agreed that no other location was adequate for the 2 car garage.

~ Frank Peteroy suggested that since two walls of the garage are so close to the property line they should be fire retardant cement fiber board.

~ Linda objected to that idea in consideration of the cost and the fact that the project will be located outside the 5' allowed.

~ Hilarie Thomas had a comment on the naming of the road on the map.

The appeal is for a five foot right side area variance and a five foot rear area variance, 232-8 D(4).

*~ Jon Strom asked for a motion to accept the application for a public hearing on July28, 2016, Michael Diperi made the motion, Hilarie Thomas seconded, all agreed.*

##### **2) 2016-06, Allen Crowley, Ivy Street, Tax Map 155.19-1-30.100**

Front yard setback for renovation of existing house.

Linda Chernewsky came to the table, she represents the owner, Mr. Crowley who was also present.

Linda explained that the existing house is in poor shape and will have to be built. She is asking for relief from 232-24 B (2) a [2+5], modification of a non-conforming existing structure.

The proposed house will be in the same location as of the current one.

The roof height will be the same (23.10'), a deck will be added to the back of the home.

This is a through lot, it has two front yards. The percentage lot coverage will be slightly under the actual one. It will be a 3 bedroom house. The square footage will be a little less than the existing one.

Partial demolition permit was obtained. The septic system will be replaced.

The existing gravel driveway will be extended.

~ When Frank Peteroy asked if a garage will be built, Linda responded that it was not part of the plans now.

~ Jon Strom asked Linda to provide more details on the proposed driveway for the public hearing.

*~ Jon Strom asked for a motion to accept the application for a public hearing on July 28, 2016, Michael DiPeri made the motion, Hilarie Thomas seconded, all agreed.*

Jon Strom noted that no measurements were provided for the set-back on the referral forms from the building code enforcer. Jon asked to find out from the town supervisor if the ZBA could have the set-back measurements already figured out on the forms.

## **5) Public hearing:**

**1) 2016-03, LaConte, 8 Arbor Dr.** Tax map # 165.9-1-8. Area variance for re-construction of a home on a non-conforming lot.

*~ Jon Strom asked for a motion to open the public hearing, Jeffrey Judd made the motion, Michael DiPeri seconded.*

~ Jon Strom read the Planning Board referral;

“At the June 2, 2016 Planning Board meeting the members reviewed the application of Michael and Diane LaConte on Arbor Drive. They voted unanimously to approve the Site Plan subject to receipt of an electrical lighting plan and approval of the ZBA variances. No other issues were found.”

~ Linda Chernewsky represents the owners of the property. She indicated that she had a lighting plan and that it was ready to be submitted to Lee Heim.

Linda explained that the house was originally built on piers, the outside walls are sinking, and no insurance company would cover the house as it is now.

The house has to be torn down and rebuilt up to code in the same footprint, a deck and a front porch will be added.

The septic system was inspected on May 8<sup>th</sup> and found to be in good working condition. No changes are necessary on the existing septic system and water supply. Linda presented a letter from the engineer that inspected the system.

~ Jon Strom asked about the number of bedrooms. Linda responded that the house will have 3 bedrooms, two of them will be on the first floor.

The height of the house will be 31.4' in the back and 25' in the front, the lot coverage will not exceed 20.70%.

All the abutters were contacted.

There were no questions from the audience.

*~ Jon Strom asked for a motion to close the public hearing, Hilarie Thomas made the motion, Michael Diperi seconded, all agreed.*

*~ 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 232-24 B2, A5.

A front yard area variance on Crescent Rd of 25.48'

A right side area variance of 21.84'

A left side yard area variance of 8.18'

Roll call vote: Frank Peteroy;YES Jeffrey Judd;YES Jon Strom;YES  
Hilarie Thomas;YES Michael Diperi;YES

Variances are granted.

5) **Closed Public Hearing:**

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

Paul Freeman and Aron Depaolo represent the Ben Meirs they were present at the meeting.

~ Ken Dow indicated that the Environmental Impact Statement is now closed, it was circulated on the town web site and was available to the public.

Ken reads the draft of the Findings Statement for the board consideration.

Ken noted that it is a separate process from the EIS, a significant impact was determined, and in order to proceed what applicant has done in order to minimize the impact will be reviewed by the board.

Ken Dow proceeded to read the draft findings statement.

**WHEREAS**, the Copake Zoning Board of Appeals, as lead agency for SEQRA purposes, made on September 24, 2015, a determination in accordance with SEQR 6 NYCRR Part 617 that the proposed project may have at least one significant adverse impact on the environment—a “Positive Declaration” for the proposed project and thereby required the preparation of an Environmental Impact Statement (EIS) for the proposed action; and

**WHEREAS**, a final EIS was prepared and accepted by the lead agency Copake Zoning Board of Appeals, as of May 26, 2016;

**IT IS HEREBY RESOLVED**, that the Copake Zoning Board of Appeals, as lead agency, makes the following findings:

1. Relevant environmental impacts, facts and conclusions from the FEIS.

a. In the Town of Copake Zoning Board of Appeals’ EAF Part 3 Positive Declaration, the Board concluded that the proposed action may have a significant adverse environmental impact in relation to “impairing the character or quality of the existing community.” The Board cited eight salient characteristics of the proposed action that underline the anticipated adverse impact upon the community and neighborhood character in support of its EAF Part 3 Positive Declaration determination, they are:

i. The rental of multiple properties simultaneously, especially to a large group or related groups occupying multiple houses.

1. To this concern, the applicant has adopted a policy of not marketing the properties to related groups. The EIS states that “the Ben-Meir’s hereby declare in this Final Environmental Impact Statement, as a mitigating measure, that as a condition of approval and issuance of their special permit, they will use their best efforts to not rent multiple properties simultaneously to related groups.”

ii. The lack of supervision of renters, due to the fact that the owners or their agents do not reside at the property.

1. The applicant has employed a rental agent who lives in close proximity, who is to make “regular and periodic site visits” to the subject property.

iii. The number of potential occupants at each location.

1. An occupancy limit has been established, which, in conjunction with avoiding renting multiple houses to related groups, is intended to limit the occupancy or presence on site to reasonable levels.

iv. Increase in vehicular traffic – including buses – and unsafe vehicular operation.

1. A traffic study found that the proposal would not, on average, increase vehicular traffic. In addition, the fact that the property would not be permanently occupied—and the applicants’ houses have, according to the applicant, been rented about 20 percent of the time—reduces traffic on an annualized basis.

v. The very short-term nature of the rentals, causing rapid turnover of occupants, in comparison with seasonal or longer-term rentals.

1. The area around Upper Rhoda Pond is marked by visitors, including at the nearby camps. Applicant argues, but the Board lacks clear evidence, that many houses in the area have seasonal or changing occupants.

vi. The lack of respect for neighborhood and its residents resulting from the lack of community connection of transients.

1. Public comments established through direct observation that obtrusive noise was, at times, generated from the rental of the applicants’ properties. Several mitigation measures have been identified by the applicant to maintain appropriate levels of noise at the properties. Beyond that, the Board generally possessed a lack of proof linking adverse behavior or effects on the neighborhood to the applicants’ properties or their renters.

2. The applicant cites its changed marketing practices and the notice of expected behavioral standards that is to be provided to renters as means to ensure that renters are not disruptive to the neighborhood.

vii. Misuse of Rhoda Pond, including littering and unsafe activities.

1. Similarly to vi., above, there is a lack of proof linking adverse behavior or effects on the pond to the applicants’ properties or their renters, and a notice outlining safe and appropriate conduct that is to be provided to renters and the provision of life preservers at the house is intended to ensure that renters do not misuse the pond resources.

viii. The propensity to be rented to groups such as college students or wedding parties, which have an obvious propensity to carry on loud and disruptive party activities in comparison to the rental of a house to a mixed-age family unit.

1. The record does not support the establishment of a “propensity” to be rented in such manner, although the applicants admit that it has happened.
2. The applicant has sought to mitigate the potential of disruptive rentals by targeting their rental to families, by not marketing the four properties in a coordinated way, and by providing notice to renters of the neighborhood context and the standards of appropriate behavior that are expected of such renters.
  - b. Each of these eight issues related to the potential adverse impact of “impairing the character or quality of the existing community” was addressed in the EIS.
2. Weighing and balancing of relevant environmental impacts with social, economic, and other considerations.
  - a. In this matter, the environmental impacts of concern are essentially in relation to social and economic considerations, in that the impact of concern is “impairing the character or quality of the existing community.” As such, and in light of the mitigation efforts of the applicant to minimize impacts on the community, this matter does not really lend itself to the type of balancing described in the heading. The applicant does address, in a positive way, the existing shortage of lodging options in the Town.
3. Rationale for the agency’s decision.
  - a. The lead agency Zoning Board finds the proposed action, subject to the mitigation measures, has satisfied the requirements of the environmental review and may be approved. The Board’s area of concern was limited to the potential impairment of “the character or quality of the existing community.” In addressing that concern, eight specific aspects of the proposed action were enumerated, evaluated, and responded to, as referred to in paragraph (1.), above, and addressed in further detail in the EIS. In each case, the applicant’s mitigation proposals were found to substantially reduce the risk or magnitude of any adverse impact. Given that this was the scope of the area of concern, its satisfaction enables the Board to determine that the project satisfies the requirement of SEQRA to minimize adverse environmental impacts to the maximum extent practicable, by the incorporation, as conditions, of enumerated mitigation measures.
4. Certification that the requirements of Part 617 of the State Environmental Quality Review have been met.
  - a. This findings statement is the culmination of the lead agency’s review of the proposed action, which has been conducted and completed in compliance with the procedural, notice, public input, filing, and other requirement of Part 617 of the New York State Environmental Quality Review.
5. Certification that consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.
  - a. The Final EIS addressed the prospect of reasonable alternatives, and found that no superior practical alternatives were available that satisfied the applicant’s fundamental desire to obtain income from the rental of the existing single-family house located on the subject parcel. The possible alternative of renting the property on an annual or seasonal basis was not clearly preferable, in that it is not clear that the income derived from such a use would be sufficient for the applicants and that, in light of the mitigation measures to which the applicants are committed, it is not clear that such an alternative would have a

significantly different impact upon the neighborhood, in relation to the environmental factors of concern, from the initial proposal. Furthermore, it appears that the applicants do use the property for family purposes from time to time, which would likely be precluded if the property were rented out on an annual or long-term basis.

**IT IS FURTHER RESOLVED**, that based upon the entirety of the environmental review pursuant to Part 617, the FEIS, and these findings, the proposed action, subject to the mitigation measures, has satisfied the requirements of the environmental review and may be approved, provided that it is also found to satisfy the requirements of the Zoning Code of the Town of Copake and any other relevant requirements that may be applicable and necessary for final approval of the action.

~ Hilarie Thomas commented and objected to the statement “recurring renters “in the EIS. No proofs of that were presented and it should not be part of mitigation efforts in the findings statements.

~ Ken Dow described the action that was at this point required by the board. EIS was a descriptive, ZBA now has to determine if the remedies to minimize impacts are sufficient or not.

~ Frank Peteroy commented that he could not imagine how vi, vii and viii could be mitigated having to do with human nature.

~ Hilarie Thomas with regard to 5A stated that she did not agree, no proof were provided of any financial hardship if the houses were rented yearly instead.

~ Michael Diperi indicated that the findings statement seemed satisfactory in his opinion. AIRB&B is a new way of life, everyone can be a transient at one point, which does not mean that you are going to trash the place you are renting short term.

~ Jeffrey Judd agreed with Michael Diperi. He agreed with the analyses. He also noted that Copake code’s approval for one house does not guaranties approval for another one.

~ Jon Strom acknowledged the copious work on the part of the applicant to attempt to mitigate impact. Jon asked the members if they were ready to make a motion on the findings statement.

*Jeffrey Judd made the motion to accept and adopt the Findings Statement as drafted Michael Diperi seconded.*

Roll call vote on *Findings Statement*:

Frank Peteroy ;Abstain	Jeffrey Judd;YES	Jon Strom;YES
Michael Diperi;YES	Hilarie Thomas; NO	

~ Jon Strom stated that at this point the board can approve or deny the special use permits on all the houses or approve or deny the granting of the permits on some of them. "Tourist House" definition would be the most adequate denomination for the applications in question.

~ Frank Peteroy stated that he is in support of the single family concept but also the right of a property owner to rent his property. Town codes are not in accordance with the state of NY code on boarding houses, it was written in 1984.

~ Hilarie Thomas commented that, as proposed, these boarding houses will affect a small portion of that community and change its nature and character.

Comprehensive plan indicated a maintenance of the status quo in that particular area of town. She also noted that despite the EIS and findings statement she is not certain that the mitigating measures could be implemented.

~ Ken Dow emphasized that whatever decision is taken by the board it has to be based on facts in the records, facts that can be looked at and based on rational decisions. A well-articulated line of reasoning has to be followed to support a decision.

~ Ken Dow presented a draft of the Resolution.

A discussion went on.

~Jeffrey Judd commented on 232-28 G(1) & (2). Little proof on rental density control was offered. Use as applied is inharmonious with the community. It will lead to detrimental noise and theft. The density proposition is not in conformance with the town code and it will drive his vote.

~ Frank Peteroy feels that the preservation of single family home and neighborhood should be preserved as well as the right for a property owner to rent his house. Giving a label as a boarding house makes it a commercial operation.

~ Ken Dow noted that a determination by the code enforcer can be overruled by the ZBA. When granting variances that is what the ZBA does.

~ Michael Diperi made the motion to adopt the Resolution on all four properties, Jon Strom seconded.

~ Jeffrey Judd before his vote stated the fact that his law firm has a business relationship with Mr. Freeman's firm however there are no conflicts of interests whatsoever. Mr. Freeman concurred.

Roll call vote on the *Resolution on all four properties:*

Frank Peteroy ;NO     Jeffrey Judd;NO     Jon Strom;YES

Michael Diperi; YES            Hilarie Thomas; NO

Paul Freeman pointed out that it might be four jointly resolutions however four different applications were presented.

*Jeffery Judd made a motion to nullify the previous denial vote for lack of clarity, Michael Diperi seconded, all members agreed.*

~ Ken Dow indicated that the fact that there were four houses made things unclear. He suggested that the board voted on the Findings Statement acknowledging that the vote was on each individual house.

*~ Jon Strom made a motion to vote on approving the Findings Statement for each of the following properties;*

2015-01    2117 Rt.7A  
2015-02    2103 Rt.7A  
2015-03    2111 Rt. 7  
2015.04    22 Howard Dr.  
*Michael Diperi seconded.*

Roll call vote:

Frank Peteroy ;Abstain      Jeffrey Judd;YES      Jon Strom;YES  
Michael Diperi;YES          Hilarie Thomas; YES

Vote on the Special Use Permit for **2117 Rt.7A**

Roll call vote:

Frank Peteroy ; NO      Jeffrey Judd; NO      Jon Strom;YES  
Michael Diperi;YES      Hilarie Thomas; NO

On the Special Use Permits for **2103 Rt.7A**

Roll call vote:

Frank Peteroy ; NO      Jeffrey Judd; NO      Jon Strom;YES  
Michael Diperi;YES      Hilarie Thomas; NO

On the Special Use Permits for **2111 Rt. 7**

Roll call vote:

Frank Peteroy ; NO      Jeffrey Judd; NO      Jon Strom;YES

Michael Diperi;YES            Hilarie Thomas; NO

On the Special Use Permits for 22 Howard Dr.

Roll call vote:

Frank Peteroy ; NO        Jeffrey Judd; NO        Jon Strom;YES

Michael Diperi;YES        Hilarie Thomas; NO

Special Use Permits requests are denied on all four properties.

~ Ken Dow indicated that each member had to articulate the reason for the denial.

~ Frank Peteroy stated that he had researched the issue very carefully and looked at the code step by step. He read a document attached to these minutes.

**(Attachment on file in the town Clerk's office.)**

~ Jeffrey Judd agreed with Frank's point of view, the code is difficult to understand. He is most concerned with 232-28 G (1)&(2) whether there are assurances or not of detrimental harm to community, what was offered by the applicant to mitigate impacts is more of a wish list than an assurance.

~ Hilarie Thomas agreed with Jeffrey's earliest statement. The comprehensive plan makes an effort to preserve the current lakes and ponds. In the Findings Statement, v,vi, vii and viii are not in harmony with the comprehensive plan. The applicant has mitigated as much as they could however the project is detrimental to that particular community.

Paul Freeman requested an audio copy of the meeting.

**Internal business:**

It was decided by the board that the August meeting should be canceled due to the absence of two of the members that month.

Jon Strom commented on some issues he had with the Zoning Workshop. He will write to the town supervisor Jeff Nayer to share his concerns. There was no follow up on his request to share the information that he had worked on.

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

***The meeting was adjourned at 9:45.***

**Next meeting July 28, 2016**

Respectfully submitted. Veronique Fabio Recording Secretary.