

**Town of Copake
Zoning Board of Appeals**

~

Meeting Minutes of October 22, 2015

~

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on October 22nd, 2015, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of 1 was present as well as,
Susan Sweeney; Town board liaison, and Ed. Ferrato; Code enforcer.

Roll call:

The meeting was called to order at 7:15 PM by Jeffrey Judd vice-chair as Jon Strom was absent.

Jon Strom chairman and Michael Diperi were not able to attend the meeting.
Jeffrey Judd; Vice chair was present as well as Frank E. Peteroy, Hilarie Thomas and Kenneth Dow; Copake Town Attorney.

Veronique Fabio: Secretary was present to record the minutes.

Reading and approval of the minutes of preceding meeting:

~ Jeffery Judd asked for a motion to waive the reading of the September 24 minutes and to approve them.

Hilarie Thomas made the motion and Frank Peteroy seconded.

Jeffrey Judd acknowledged the following correspondence,

9-24-15 From Victor Goode in ref. to Ben Meir.

10-01-15 From Marc Gross, Goode & Scharf in ref. to Ben Meir.

10-07-15 From Victor Goode in ref to his latest submission.

10-21-15 From Jeff Nayer about a free training session in Cairo.

The order of the meeting will be changed tonight to accommodate the applicants.

New Application:

2015-14 Lynch Family Trust, 309 Lake Shore Dr. Tax Map # 176.3-3-29

Area Variance for;

A Front Yard Area Variance of 36.55’.

A Right Side Yard Area Variance of 4.31’.

A Rear Yard Area Variance of 57.07’.

Relief from section 232-9 P (1) & (2) as well as relief from 232-24 B (2) (a) [2].

~ Linda Chernewski represents the owners of the property she presented the project to the ZBA members as follow; the house was purchased in May 2015. It is located in a dead end street. Renovation of the house and addition of a second story is planned.

The owner is handicapped and need an access ramp as well as a large bedroom and a handicapped accessible bathroom on the first floor of the house. Easy access to a screen porch is also necessary. A deck on the slopping side of the property would allow the owner to safely circulate in her wheelchair around the house.

A DEC permit application has been filed.

The septic system has been checked, the concrete tank is 1000 gallons, it was pumped out and the dye test results were satisfactory. Linda submitted a letter from *Morris Associates* dated 10-14-2015 confirming the inspection of the system.

The number of bedrooms will remain the same as present.

The original foundation will be kept.

Precast piers for the deck will be used to minimize soil disturbance.

A list of the five abutters is in the file.

The application is complete.

~ Jeffrey Judd asked for a motion to accept the application for public hearing on November 19, Hilarie Thomas made the motion, Frank Peteroy seconded. It will be referred to the planning board.

Public Hearing:

This is a continuation of a public hearing opened on September 24th.

(1) 2015-15 Konsker 45 Golf Course Rd. Tax Map # 165.1-1-42

Area variance for replacement of deck, steps and retaining wall as well as placement of permanent dock anchors within 100' of Copake lake.

~ Guy Winig came to the table, he represents the owner Mitchel Konsker and presented 8x11 revised plans that alleviate the drainage issues raised at the last meeting by Frank Peteroy.

He noted that the project consist of the replacement of an existing wooden deck. The 6x6 wooden posts will be replaced by more durable PVC piers filled with concrete 3 to 4' into the high water line. The new wooden deck will be covering the piers. The deck will be located at the closest point 10' away from the western property line and will extend lest over the water than the existing structure. 6 piers will be in the water the other 6 will be in the bank.

Behind and around that new deck will be a reinforced concrete veneered retaining wall. A drainage system with rip rap splash pads will be installed as well as 1" weep holes on the face of the retaining walls.

The D.E.C. and Army Corps of Engineers permits will be applied for.

The upper retaining wall located over the sewer easement will be dry laid in order to make the area easily accessible in case of a problem. All the material on the two upper terraces will be Techo block pavers.

The new movable docks will extend less father in the water than at present.

Guy Winig submitted a letter dated 10-15-2015 from the Lakeshore Homeowners Association stating that *"The new structure will cover only half of the easement*

area, about 10 feet, and if there was a need to access the sewer pipe a portion of the retaining wall would have to be removed temporarily.”

~ Frank Peteroy questioned the impact of weight of the retaining wall on the sewer pipe.

He suggested that a Hold Harmless Agreement be set up between the owner of the property Mitchell Konsker and the town of Copake.

Ken Dow argued that in his opinion there would be no grounds for a claim in this situation.

~ Guy Winig indicated that he had a conversation with Trish Gabriel from the DEC and she did not foresee any problem with the project. He noted that it was a replacement and improvement of an existing structure. The existing structure consist of two decks that will be reduced to only one with the new plan.

There were no comments from the notified abutters.

The members recommended an approval for the variance contingent to the obtention of the DEC permit and the Hold Harmless Agreement.

~ Jeffrey Judd asked for a motion to close the public hearing, Hilarie Thomas made the motion, Frank Peteroy seconded.

~ Jeffrey Judd 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.

Jeffrey Judd 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: YES

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 section 232-9P (1) Development within 100' of a body of water.

Roll call vote: Frank Peteroy; YES Jeffrey Judd; YES

Hilarie Thomas; YES

Area Variance is granted

**2) 2015-12 Karen & Michael DiPeri, 23 Veron Rd. Taconic Shores
Tax map # 176.1-2-35**

The public hearing for this application is postponed until next November meeting.

Closed Public Hearing:

2015-01, 22 Howard Dr. Tax map # 186.-2-76

2015-02, 2103 County Rt. 7A Tax map # 186.-2-29.2

2015-03, 2117 County Rt. 7 Tax map # 186.-2-29-112

2015-04, 2111 County Rt. 7A Tax map # 186.-2-67

Owner Alon Ben Meir & Deanna Kory Ben-Meir.

The owners are represented tonight by Aaron DePaolo Esq. requesting special use permits to operate the four properties as boarding houses.

Ken Dow recapped that the ZBA had closed the hearing and made a positive declaration on the SEQR.

Ken read the 5 pages SEQRA findings.

SEE BELOW

EAF Part 3

Actions: Application by Alon Ben-Meir for a Special Use Permit in relation to 22 Howard Drive, Copake, NY, for a "Boardinghouse."

Application by Alon Ben-Meir & Deanna Kory Ben-Meir for a Special Use Permit in relation to 2103 County Route 7-A, Copake, NY, for a "Boardinghouse."

Application by Steven Rose 2117 LLC for a Special Use Permit in relation to 2117 County Route 7-A, Copake, NY, for a "Boardinghouse."

Application by Alon Ben-Meir for a Special Use Permit in relation to 2111 County Route 7-A, Copake, NY, for a "Boardinghouse."

SEAF Part 2.

The lead agency Copake Zoning Board of Appeals determined that a "moderate to large impact may occur" in relation to the following questions on **Part 2** of the SEAF:

In relation to each of the four properties:

2. Will the proposed action result in a change in the use or intensity of use of land?
3. Will the proposed action impair the character or quality of the existing community?

And in relation to 22 Howard Drive only:

5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?

SEAF Part 3.

In its **Part 3** evaluation, a majority of the Board concluded that the proposed action would not result in any significant adverse environmental impacts in relation to numbers 2 and 5.

The Board concluded that the proposed action may have a significant adverse environmental impact in relation to number 3, impairing the character or quality of the existing community.

The Board specifically took note of section 617.7(c)(2) of 6 NYCRR 617.7 (Determining significance), which requires the lead agency to consider "reasonably related long-term, short-term, direct, indirect and cumulative impacts..." In such light, the Board considered both the

above-identified proposal alone and the above-identified proposal in conjunction with three other similar proposals simultaneously before the Board, which are contiguous or in close proximity to each other and share common ownership and control, and, in the case of three of the properties, have been operated as a coordinated enterprise. The Board concluded that the above-identified action, in isolation, would not result in a significant adverse environmental impact in relation to community character or quality, but that such action, considered in conjunction with the other projects concurrently applied for, may result in a significant adverse environmental impact in relation to community character or quality.

It is specifically noted that all of the Board's conclusions and determinations are in relation to whether, *within the framework of SEQRA*, a *significant* adverse environmental impact may result, and should not be construed as determinations as to whether *any* adverse impact may result from the proposed project.

Explanation of Determination

The properties that are the subject of the four proposals, while formally under different legal ownership, are acknowledged to be owned either directly, or through intermediate entities, by the same principal, Alon Ben-Meir. The applicant has stated that the houses that are the subject of the four applications were acquired, in close proximity of each other, for the eventual purpose of providing homes or accommodations for the Ben-Meir's children. In addition, the three properties that have already been used for short-term rentals are overseen by a common property manager and have been marketed jointly on internet media and rented, for transient occupancy, to groups who have occupied all three houses. Thus, the formal ownership structure notwithstanding, the four properties are clearly under common ownership and control and have been operated as a combined enterprise.

The Board's evaluation of the potential impact was informed not only by its expectations of potential impacts, but also by the fact that three of the subject properties have been, and are currently, used by the applicants for the short-term rental to groups (although no permit has yet been granted which would permit such rentals, and the applicants have been informed that their continuing rentals are in violation of the Copake Code). There is, therefore, an established history of the applicants' using the properties in a manner similar to that for which permits are being sought through these four applications. The public hearings held in conjunction with the special permit applications have brought forth extensive commentary from neighbors and other persons living in the vicinity of the subject properties, and commenters have described their personal experiences and observations in relation to the ongoing rentals. The Board relied on statements of numerous residents of the area in which the proposed actions would be located as well as the direct personal familiarity and knowledge of Board members of the subject neighborhood.

The proposals under consideration and subject to this SEQRA review consist of the rental of entire houses to groups of as many as fifteen (15) people at 22 Howard Drive, eight to ten (8 - 10) people at 2117 County Route 7-A, and nine (9) people at 2111 County Route 7-A, (based on septic capacity), and [] people at 2103 County Route 7-A, totaling [] renters at the four properties in total. Significantly, in contrast to what would be typical in, for example, a Bed and Breakfast situation, when these subject houses would be occupied by renters, neither the owner nor any representative of the owner would concurrently reside at, or ordinarily be present at, the

house, and no ongoing oversight would exist. The owner has provided for a property manager to be available, when called for, who stated that she typically visits each house on a daily basis, but does not generally remain on site. In short, the temporary occupants are mainly unsupervised by the owners.

From the extensive oral and written testimony and submissions received by the Board during the public hearing period, the Board understands the neighborhood to be quiet, cohesive and harmonious, with light vehicular traffic, and marked by residents' continuity of residency, familiarity with each other and respect for each other's comfort and quiet enjoyment of their properties and of Upper Rhoda Pond, around which the subject properties and the objecting neighbors' properties are generally located.

Neighborhood residents described for the Board, during the public hearing, numerous specific personal observations or encounters with renters, the applicants or the applicants' agents. Testimony by neighborhood residents established that the un-permitted use of three of the subject properties over the past year or more brought large groups of transient renters into the neighborhood, who on several occasions rented and stayed in the three houses but congregated at one of the houses in large numbers, mainly unsupervised by the owners, creating large, noisy, and disruptive gatherings. It was both testified to by persons speaking during the public hearing and personally observed by members of the Board that these properties were marketed through internet marketing websites for rental collectively as available to house and accommodate large groups. Neighbors stated that the nature of the rentals also caused an increase in the number of vehicles and the amount of vehicular traffic on the private-road neighborhood roads and streets.

Without recapitulating the entire record of oral and written comments, (although this determination specifically incorporates and relies on the entirety of such record) illustrative examples of such statements are cited below:

See, e.g. Minutes of the ZBA public hearing, February 26, 2015, comments of Neil Klein (disturbances caused by "guests"); Kathy Siebert King (no supervision is provided, beer bottles and cans thrown in lake); Victor Goode (30 or more people congregate in the yard of one single house resulting in noise increase, litter on the lake, Howard Drive is a narrow road and the increase in traffic is a safety issue); Norma Ramos (experience first-hand the impact of the business on her house, collective use of the houses is encouraged in the advertising, buses used to transport guests, witnessed poorly supervised children on the lake and bottles and cans on the shore, complaints address to the Ben-Meir staff are received with more and more hostility); and others.

Minutes of the ZBA public hearing, May 28, 2015, comments of Norma Ramos (applicants have not done anything in response to objections, a group of 18 young persons were staying at 22 Howard Drive, applicants' staff gets annoyed when phone calls are made, effort made stated by the Ben-Meirs have had no effect so far); others. In response, Jennifer Crosby, the applicants' manager, stated that 9 women were renting 22 Howard Drive and 8 men were renting 2103 County Route 7.

The Board notes that during the public hearings, several persons also spoke in favor of the applicants' proposals, often in terms of potential economic benefit to the Town. However, as review pursuant to SEQRA is not a balancing test, such comments, except for a few that

contended that past rentals of the property have not been noisy or disruptive, are not relevant to the determination made herein.

Salient characteristics of the proposals and applications that underlie the anticipated adverse impact upon the community and neighborhood character:

- 1) The rental of multiple properties simultaneously, especially to a large group or related groups occupying multiple houses.
- 2) The lack of supervision of renters, due to the fact that the owners or their agents do not reside at the rental property.
- 3) The number of potential occupants at each location.
- 4) Increase in vehicular traffic—including buses—and unsafe vehicular operation.
- 5) The very short-term nature of the rentals, causing rapid turnover of occupants, in comparison with seasonal or longer-term rentals.
- 6) The lack respect for neighborhood and its residents resulting from the lack of community connection of transients.
- 7) Misuse of Rhoda Pond, including littering and unsafe activities.
- 8) 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.

Of particular relevance in determining significance is the setting of the proposed action, as addressed above. As a small residential neighborhood, it is particularly susceptible to substantial change by the introduction of multiple venues hosting transient guests, particularly if the renters of the different houses are connected with each other and are likely to congregate collectively. The Board also noted a passage of the Town's adopted Comprehensive Plan that allows for the maintenance, but not expansion, of business activity in the area of Upper Rhoda Pond. The probability of the occurrence of the identified adverse effects is high, as the Board heard extensive commentary from neighbors who testified as to their personal observations of such effects having taken place on numerous occasions. The duration of the effects would be expected to be as long as the use is ongoing. Because the effects are due largely to human behavior, they are not irreversible. The geographic scope of the impacts is not large, but is concentrated within a neighborhood area around Upper Rhoda Pond.

The applicants have stated that they have modified their rental practices and will make other modifications, in order to mitigate some of the complained-about effects. *See, Minutes of the ZBA public hearing, May 28, 2015*, statements of attorney Paul Freeman, Jennifer Crosby and Deanna Ben-Meir. The applicant agreed to state the occupancy numbers in the rental agreements; the number of bedrooms at 2111 County Route 7A has been reduced from 4 to 3; the number of bedrooms at 22 Howard Drive has been reduced from 6 to 5; it has been proposed that rental contracts would contain specific stipulations governing acceptable behavior of renters, including noise and local ordinances; the applicant has proposed not marketing the properties together, but admits that multiple properties might nevertheless be rented out to large groups or to groups related to each other; applicants are now being vetted.

While the Board acknowledges the applicants' statements of modification of or intention to revise their rental practices, there is uncertainty about the procedures to be employed and their effectiveness. While the applicant refers to "vetting" or "screening" renters, it is not clear what

standards are to be, or can be, employed in such respect. The Board is concerned that economic incentives may conflict with such stated intentions and representations and inhibit the applicants' willingness to enforce rules or evict renters who misbehave and (particularly in light of the applicants' continued short-term rental of properties despite notice from the Town that such activities constitute a violation of the Town Code) remains skeptical about the applicants' enforcement of those newer or proposed practices.

In light of the extensive public input and the Board members' own familiarity with the affected neighborhood, coupled with ordinary knowledge and judgment, the Board determines that despite the potentially mitigating steps outlined by the applicants, the proposals before the Board may have a significant adverse environmental impact in impairing the character or quality of the existing community.

In conclusion, the Zoning Board, as lead agency, issues this Positive Declaration and requires the preparation and submission of an Environmental Impact Statement (EIS) in relation to the above action.

In addition, the Board determines that, whereas the anticipated significant adverse impacts are limited to impairing the character or quality of the existing community, and arise in particular due to the eight factors noted above as "salient characteristics," the analysis to be undertaken in the EIS is sufficiently well-defined that the additional step of explicit scoping is not necessary.

In addition, the Board determines that scoping is appropriate, consistent with the Board's determination that the anticipated significant adverse impacts are limited to impairing the character or quality of the existing community, and arise in particular due to the eight factors noted above as "salient characteristics."

~ Ken Dow stated that this was his recommendation now the board would have to discuss the details.

There was a discussion on part two of the SEQRA between Frank Peteroy and Ken Dow.

An Environmental Impact Statement will have to be made in light of the board's findings.

~ Jeffrey Judd made a statement that he was an attorney and his firm had retained Freeman & Howard on certain matters that were unknown to him and matters he had no involvement whatsoever with.

~ Ken Dow noted that a vote will have to take place after the EIS is completed. The blanks will be filled out with the number of bedrooms. Numbers that were revised following the inspections of the septic systems.

Part 3 will have to be signed by the ZBA chairperson and forwarded to the applicant.

Jeffrey Judd asked for a motion to accept the SEQRA part 3 as written, Hilarie Thomas made the motion, Frank Peteroy seconded.

Internal business:

It was noted that the position for an alternate member and a full time m Frank Peteroy in reference to Art. 18, 805 stated that he would like to bring that up in front of the full board.

~ Jeffrey Judd asked for a motion to adjourned, Frank Peteroy made the motion, Hilarie Thomas seconded.

The meeting was adjourned at 8:45.

Next meeting November 19, 2015

Respectfully submitted. Veronique Fabio, Recording Secretary.

