

**Town of Copake
Zoning Board of Appeals
Minutes-October 25, 2012**

Draft

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on Thursday, October 27, 2012, , at the Copake Town Hall, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman Frank Peteroy at 7:10 PM.

Roll call:

Present at this meeting were: Frank E. Peteroy, Emilee Drobbin, Glen Schermerhorn , Michael DiPeri and Kenneth Dow, Copake Town Attorney. Hillarie Thomas and Jon Strom were absent.

An audience of about 11 was present including Jeanne Mettler Town Board Liaison, Marcia Becker Planning Board Chair and Edward Ferrato Building Inspector.

Minutes:

Frank asked for a motion to wave the reading and to approve the September minutes, Michael made the motion, Glenn seconded, all in favor.

Frank noted that the August minutes needed some corrections and will be reviewed at a later time. Frank also noted that the April minutes were still open.

Correspondence:

Frank noted that the following correspondence would be reviewed during the respective public hearings

- 9-28-2012 ----- Email from Tom Phillips ref to Taconic shores O.A. approval.
- 9-30-2012-----Memo from Frank E. Peteroy ref. to Robert Kitchen financial return issued by a CPA.
- 10-5-2012----- Memo from Planning Board ref. to Ziegler # 2008-08 and 2008-09
- 10-5-2012-----Message from Planning Board ref. to Mr. Frank's residence, Island Dr.Copake
- 10-15 12 -----NY Department of State training: land use training specialists

Closed Public Hearing:

None

Public Hearing:

1. Application # 2012 09 Robert Kitchen, 480 Farm Road, Copake, Area and Use variance requested for processing poultry and install a trailer .

Robert Kitchen approached the table and announced that the person who had been doing his income tax is not a CPA. He stated that he had given the board all the financial statement he could provide at this point.

Ken Dow intervned and clarified that the board does not have to have these statements, it is just another tool that can be used to help in the decision process. A rational judgment and decision can be made with other type of information.

This is not a court of law and income tax returns in this case are not strict standard of evidence. It is up to the board to make a reasonable judgment and weight the need for a variance based on all type of information.

Mr. Kitchen's "Quick Books" can certainly be taken in consideration.

Frank stated that the application will be reviewed with the documents available.

He asked Mr. Kitchen if he had looked into a wider trailer, Mr. Kitchen responded that 102 inches wide is standard and it was adequate for him.

Frank stated that the decision on this application is differed until next meeting, in November.

2 Application #2012-14--- Tom Phillips for Edward Leuschher, Tax Map # 176.3-1-3, Lots 361 & 362 . 20 Mansion Dr. Copake. Modular construction on a vacant property. Area variance requested for set back that cannot be met.

Mr. Tom Phillips approached the table, he mentioned that *on September 21st* the Taconic Shores HOA had approved the project and presented a letter from the Columbia County Department of Health, dated October 19 , 2012 in ref to the location and size of the Septic Tank and Leach field. Mr. Phillips noted he was requesting a variance for sets back that cannot be met, the lot being undersized.

Proposed set backs are as follow;

- * 21 feet West side set back. (Mrs. Mc Nulty house is 7.5 feet from the property line).
- * 22 feet East side set back. (Present adjacent property is 10 feet from the line).
- * 20 feet front set back. (Mc Nulty house located 13 feet from the road).
- * 150 feet to lake from the future deck on the house as well as 150 feet for the septic tank.

The septic field area is 100 feet from the lake and meets the Department of Health requirements. The one story house will have 3 Bedrooms, 2 baths and an attached 2 car garage. The water is supplied by Taconic Shores.

Mr. Tom Phillips pointed that the Columbia County Board of Health came up to the property and inspected the test holes and gave positive feedback.

Frank noted that the Columbia County Department of Health inspected the vacant lots and determined that the proposed septic system was acceptable based on standards for typical in-ground sewage systems.

Frank noted that the septic tank, on the new plan, *following the request from the ZBA, had been moved to 150 ft .from the lake.*

Frank mentioned a letter from Mr. Leuschner dated 1-05-2012 to Craig Surprise, Tax Assessor requesting the two separate lots be combined and taxed together.

Mrs. Mc Nulty an abutter to the West side came to the table, she asked for details on the project and requested the board waits for her to speak with her house bound husband before a decision is made on this application.

Frank proceeded to explain in detail to Mrs. Mc Nulty the location of the septic tank and the house on the new plan. The septic tank and the house will be aligned at 150ft. from Robinson pond. He showed her the side yard of 21ft that will be allowed from the house to the property line on the side where her house is located. A deck will extend out from the house towards the pond. A 2 car garage will be attached to the house facing the front of the property. Frank noted that the Mc Nulty house is located 13ft from the property line. The Mc Nulty's site line will actually improve after the construction.

Mr. Tom Phillips pointed out that the lot has been cleared off of the dead trees.

The construction will be an improvement to the neighborhood; the owners of the lot are respectable people and the new family will be an asset to the community.

Frank asked if anyone had questions.

Frank suggested that the two lots be officially consolidated, *and that the consolidation of the 2 lots should be a condition to the granting of the C. of O.*

Mr. Tom Phillips asked for details of procedure for the consolidation.

Marcia intervenes and pointed out that all is necessary is a new deed that will have to be filed *and that the planning board does not take care of consolidations.*

Marcia noted that the Planning Board had not received the application on time therefore a site plan review was necessary *and the granting of the variance should be subject to Planning Board site plan review. She clarified that it was a vacant ½ an acre lot in an R2 zone, a nonconforming lot.*

Marcia Becker noted that the Planning Board did not get the referral for this application last month and that is the reason why a site plan review remains to be done.

Frank explained that Mr. Tom Phillips missed last month meeting because of date confusion on the ZBA part.

Mrs. Mc Nulty asked that a decision be deferred until her husband, who is housebound, can be informed of all the details of the project.

Mr. Tom Phillips would like to break ground as soon as possible and is not willing to wait for another meeting next month for the ZBA to make a decision.

Michael Dipieri mentioned that he was ready to make a decision tonight and that Mrs. Mc Nulty did not seem to be opposed to the project, she just wanted to have an opportunity to inform her husband.

Ken Dow noted that the board could vote tonight and review the situation in case Mrs. Mc Nulty came up with an extraordinary objection to this project. The board could reopen the hearing if necessary.

Frank confirmed that Mr. Tom Phillips be notified if anything came up tomorrow and he will be notified of the board's decision this coming Saturday.

Frank asked for a motion to close the public hearing, Michael made the motion, Emilee seconded, all in favor.

Edward Ferrato asked for clarification on the variances granted, especially for the septic.

Frank responded that only sides and rear sets back variances were necessary.

Edward Ferrato noted that a front set back variance was necessary, 2 side yards set back and a septic variance as well.

Frank responded that there was no need for a septic variance, the tank has been moved to 150 ft from the pond.

Frank asked Edward Ferrato what his interpretation of a "tile field" was?

Edward Ferrato responded that a tile field is the same as a leach field.

Frank noted that a tile field, according to the dictionary, is an earthen ware pipe, that in 1990 the Board of Health changed all their rules.

The town of Copake in the past 22 years has not changed the wording in the zoning code book to match the Board of Health wording and a tile field is not a leach field. Earthen ware is not used anymore. The septic field complies with the Board of Health.

Frank 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: No

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: No

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.

Vote on Application #2012-14 for sides and rear yard sets back variances.

Frank; Yes, Emilee; Yes, Michael; Yes, Glenn; Yes.

Variance granted with the condition that the two lots will be consolidated.

3 Application #2012-16-----Wagner, Rep. by Linda Chernewsky presented; Tax Map #165.5-1-2, 103 Golf Couse Rd. Copake NY. Area variance requested to take down existing house and replace with new house on same foot print.

Linda Chernewsky presented plans showing silt fence protection that the planning board had requested. A swell will be created to divert water away from the house as suggested by Planning Board.

Linda questioned the need for a variance, the project following the exact same foot print as the original house. The lot coverage is under the allowed square footage, the height of the proposed house does not exceed local zoning code.

Lindsey Lebretch also came to the table to look at the plans and also questioned the need for a variance.

Linda Chernewsky explained that the house could not be built in any other location because the septic tank is in the way. The existing foundation cannot be used because it is failing. Another option could be to jack up the house and replace the foundation but it would create a financial hardship for her Client.

Ken Dow asked Linda Chernewsky what was the reason for the building permit denial. She answered that sets back from the lake, sides, and height cannot be met, all the work will be done within a 100 feet of the lake.

She assured that during work the protection of the lake will be a priority.

Frank discussed the “non-conforming lot “concept. Zoning came 25 years after the existing house was built. The owner should not be prevented from building on a structurally sound foundation.

Linda mentioned that the electric system was compromised because of rodents activity and the house was unsafe and at risk for electrical fire.

A discussion followed between board members in reference to 232-24 (b) from the Copake Zoning Code and the need for a variance.

Linda noted that the height of the new house will not be over 25 feet.

She clarified her plans to protect the house from water, the swell and also a retaining wall. She mentioned her interest in using concrete preformed block for the footing of the deck. Marcia Becker Planning Board, intervened, asking if the ZBA was rejecting the denial for a permit by the Building Inspector. Noting that the ZBA was using the Replacement Code as the applicable code, this application had to go through a site plan review. The planning board is reviewing the site plan and has not made a decision yet because they feel there is a conflict with the zoning. Marcia feels a legal determination has to be made.

A lengthy discussion followed in Ref. to Replacement 232-24 (b) and on 232-9 P. from the Zoning Code.

Emilee suggested to Linda to move the house away from the lake. Linda responded that the owner does not want to move the house and just rebuild in the same foot print. She mentioned that the DEC has no problem with the project. Her client should not be penalized because of internal conflicts on the zoning interpretation.

Ken Dow stated that the resolution to the conflict is that non conforming structures, that are not in compliance with the zoning code, can be replaced.

Linda debated that she has been to the building inspector and the planning board and the ZBA twice and does not seem to be able to move forward with her project. It is costing her client money every time she has to meet with the different boards.

The project is a replacement by a structure not exceeding the square footage or the height allowed. Safety and welfare of the property owners is key and replacement of the old structure should be allowed.

Frank stated that replacement of structure and foundation is permitted in the interest of structural integrity. 232-24 (b) Replacement .All storm water controls as per NYS directives have to be implemented during construction within 150 feet of the lake.

Ken Dow suggested that the ZBA should just follow the zoning code if that is the board's views and state 232-24 B 2(b).

Frank asked for a motion to close the public hearing, Michael made the motion, Emilee seconded, all in favor.

The board members agreed and voted to accept 232-24 B 2(b). Replacement, as being permissible.

Frank;yes, Emilee;yes, Michael;yes, Glenn;yes.

New Business

New applications

1 2012-15, Hilscher & Hilscher for property located @ Chrysler Pond, Tax Map #186.1-77

Mr. Theodore Hilsher came up he represents Cook/Ruppe/Mormando/Tobash/Osswald
Mr. Hilsher's clients want to put the property for sale on the market as a buildable lot. The lot is 0.73 square feet.

Applicant was advised by Ken Dow that in order to obtain a variance, plans have to be presented. Applicant should apply for a permit from the building department.

2 2012-17 Diosino Fontana Tax Map #176.1-6-3 . Erect an 8x12 shed on nonconforming lot in front yard. Applicant requests a variance to install the shed on the property line.

Referred to Taconic Shores HOA. ZBA requested address for abutter across the street.

Mr. Fontana for safety reasons, wants to use the shed to store his lawnmower instead of in the basement of the house.

Frank asked for a motion to accept the application, Michael made the motion, Emilee seconded, all in favor.

Application accepted. Scheduled for a public hearing for November 29, 2012.

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THE NEXT MEETING WILL TAKE PLACE ON NOVEMBER 29 DUE TO THANKSGIVING

Old Business

NONE

Adjournment

Emilee made the motion to adjourn this meeting, Michael seconded, motion carried unanimously.

Meeting was adjourned at 9:15 PM.

THE NEXT MEETING WILL TAKE PLACE ON NOVEMBER 29 DUE TO THANKSGIVING

Respectfully submitted.

Veronique Fabio

Recording Secretary