

Town of Copake Zoning Board of Appeals

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Meeting Minutes of November 20, 2014

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on November 20, 2014, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of about 30 was present as well as,

Edward Ferrato: Building Department.

Jeff Nayer : Town Supervisor, Susan Sweeney: Town Board Liaison,

Jean Mettler : Town Board. Bob Haight: Planning Board.

The meeting was called to order by Hilarie Thomas at 7:10 PM.

Roll call:

Hilarie introduced the new member, Jeffrey Judd, filling out Ralph Shadics' term.

Present at this meeting were: Jeffrey Judd, Frank E. Peteroy, Hilarie Thomas, Michael DiPeri, Jon Strom, and Adam Resnikoff.

Kenneth Dow: Copake Town Attorney was also present.

Veronique Fabio was present to record the minutes.

Reading and approval of the minutes of preceding meeting:

~ Hilarie Thomas asked for a motion to waive the reading of the August 28, 2014 minutes and approve them.

~ Frank Peteroy indicated that the August minutes were ready for approval with the correction and the addition of the building code section.

~ Frank Peteroy made the motion to approve and waive the reading of the August minutes, Jon Strom seconded, all agreed; August 28 minutes approved.

~ Hilarie Thomas asked if all members had a chance to read the October 23rd minutes. She asked for a motion to waive the reading and approve the October minutes.

~ Michael DiPeri made a motion, Jon Strom second, all agreed; October 23, 2014 minutes are approved.

Correspondence:

10-27-14 From Andrew Howard, FOIL request.
10-28-14 From the community, Petition for a re-vote on the Berkshire Project.
An additional 7 letters on the same topic.
11-12-14 From Frank Peteroy , 2 paquets "Town of Copake Zoning Law updates"
11-12-14 From Ed. Ferrato, referral for LeBrecht and Kiefer.
11-13-14 From Michael Diperi , wants to continue to serve on the ZBA.
11-14-14 Memo from town board for appointment of new ZBA member.
11-20-14 From Ken Dow in Ref. to BMC.

~ Hilarie asked for a motion to move the closed public hearing for Berkshire Mountain Club to the end of the meeting. Frank Peteroy made the motion, Michael Diperi seconded, all agreed.

Public Hearing:

1) **2014-13, Lindsay LeBrecht**, 285 Lakeview Rd. Tax Map #155.18-1-41.
Area Variance for installation of a fence higher than 4' in front yard and 6' in side yard.
Lindsay LeBrecht came to the table,
~ Hilarie asked for a motion to open the public hearing, Michael Diperi made the motion, Jon Strom seconded, all agreed.

Hilarie read the Planning Board recommendation;

Bob Haight, Chair, Planning Board

January 23, 2015

At the November 8, 2014 Planning Board meeting the members reviewed the application of Lindsay LeBrecht on Lakeview Road at Copake Lake who wishes to construct an 8' fence on the Marina side of her property.

The Board acknowledged that there is an existing fence that is being replaced and is most likely grandfathered and as such a variance for the height of a replacement fence should be required as referenced by Section 232-9F of the Code pertaining to Fences and walls.

The Board had concerns that the corner sight distances might be impacted by the fence however for traffic safety these heights can be reduced by the Town Highway Superintendent and/or Town Building Inspector if need be. It was noted that the disturbance would be minimal. A site visit was suggested to get a better idea if there would be any visual impacts.

Hilarie also read the Building and Zoning Department referral.

DATE: October 7, 2014

Tax Map # 155.18-1-41

District – R-2

The Applicant needs relief from section 232-9 (F) Fences and Walls.

Ms. Lebrecht intends to install a fence higher than the required four 4'

In the front yard.

And higher than six 6' feet in the side yard.

Building and Code Enforcement Officer

~ Lindsay Le Brecht indicated that there is a boundary marker on the North corner of her property and the fence will be started 15 feet from that marker. Therefore the Planning Board concern for sight distances will be resolved. There is a tree on the property line and at that point the first 49 feet section of fencing will start. The fence will be 8 feet tall. Sections of fencing will be installed to the end of the property line wherever there is no vegetation.

~ Jon Strom asked if there were any comments from abutters. There were none.

~ Lindsay LeBrecht showed pictures of the type of fencing she was planning to install.

~ Peggy Rose, in the audience, commented positively on the project.

~ Hilarie asked if anyone had comments, being none;

~ Hilarie Thomas asked for a motion to close the public hearing. Jon Strom made the motion, Michael DiPeri seconded, all in favor.

~ Hilarie indicated that the ZBA had 62 days before rendering a decision, but she believed that the members will be able to make a decision tonight.

Hilarie 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

~ Frank Peteroy noted that there should be some kind of fencing between a business and a residential property.

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: 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.

The board tonight will vote on a variance of 4 feet on fencing height for a total of 126 feet of 8 feet high maximum fencing sections.

Roll call vote: Jeffrey Judd, YES.
Frank Peteroy, YES.
Hilarie Thomas, YES.
Michael DiPeri, YES.
Jon Strom, YES.
Variance granted.

2) 2014-14, Keifer/Freshman, Southwest Colony Rd.

Tax Map #165.14-2-7 & 165.14-2-8. Area Variance: Construction within 100 feet of a water body.

Linda Chernewski came to the table.

~ Hilarie Thomas asked for a motion to open the public hearing, Michael Diperi made the motion, Jon Strom seconded, all in favor.

Hilarie read the Planning Board memo in reference to the application.

January 23, 2015

Bob Haight, Chair, Planning Board

David Kiefer and Andrea Freshman Southwest Colony Road, Copake Lake

At the November 6, 2014 Planning Board meeting the members reviewed the application of David Kiefer and Andrea Thomas on Southwest Colony Road.

The Board discussed the fact that structure is being moved further back on the property, is being increased from 640 square feet to 840 square feet and a new septic system is being located further back on the property.

After review of the project the Board acknowledged that relief is needed from Section 232-9P(1) One-hundred-fifty-foot setback from lake or stream; Section 232-24B(a)[5] Any modification of a nonconforming building or structure is subject to a site plan review and approval by the Planning Board; 232-24B(2)(b) Replacement; Section 232-24B(2)(b) the height of the structure cannot exceed the height of the prior structure and Section 232-9G Sewage systems/.

The Board also advised the applicant that a letter of approval is required from the Department of Health.

Hilarie also read the Building and Zoning Department referral.

RE: Mr. & Mrs. Kiefer

S W Colony Rd.

Tax Map # 165.14-2-7&8

District – R-2 30,000sq’

This project is in an R-2 District

The Applicant needs relief from section 232-9 P (1).

Also from 232-9 P (2).

A Front Yard Area Variance of 20’

A Rear Yard Area Variance of 42.3’

And will also need relief from 232-24 B (2) (b)

This section should include a 10’ height variance.

Relief from section 232-9 G.

Building and Code Enforcement Officer

The project is subject to the department of health approval.

~ Jeffrey Judd asked Linda about the height of the existing house. Linda estimated the height at approximately 18 to 20 feet.

Linda explained that a swale will be created to prevent water from running towards the lake.

~ Mrs. Markowski owns a house across South West Colony rd. and she is very concerned about the impact on her lake views from her house being impacted by the new project. She submitted photos of the actual views she has from her house.

The existing house will be demolished and a new house will be built away from the edge of the lake. The land slopes down from South West Colony rd. to the water therefore the new construction will be more visible from the road than it is now.

~ An abutter had concerns about the parking area. Where will construction vehicles park?

~ Linda indicated that the parking area will remain where it is located now. She also noted that the owner of the property will be in contact with the neighbors to work things out regarding the road and possibly re-grade it.

Linda explained the details of the new septic system.

~ Jeffrey Judd asked if any chemicals will be used. Linda answered that ultra violet light will be used in this system. Judd feels that the applicant has not clearly given the ZBA an answer about the height of the project and how it will affect the views.

~ Linda Chernewski debated that the house will not be more than 25 feet high and the views will only be partially obstructed. She is hoping to start demolition right away.

~ An abutter questioned the soil erosion provisions, the run off into the lake of all the new materials and the possibility of the septic system failing.

~ Hilarie explained that silt fences and barriers are required by the building department.

~ Linda explained that the septic system will be monitored.

~ Abutters are concerned with additional traffic during construction and impossibility for EMS or fire trucks to access the area.

~ Linda noted that the road is a private road and is not up to town codes. Landscaping is planned.

~ Ken Dow noted that it is a non-confirming lot.

~ Linda indicated that she could replace the existing house following the present footprint, but it is a better option to replace it away from the lake with a structure not exceeding the square footage of present house. She is planning a 28'x 30' house.

~ Frank Peteroy suggested for a sight line plan for an accurate perspective.

~ Jon Strom agreed with Frank's request.

~ Ken Dow indicated that the house could be rebuilt where it is located now same size and height.

The public hearing is going to be kept open, and Linda Chernewski agreed to provide site line plans.

3) New Application:

- 1) **2014-15 David Shilling**, 1230 Rt.27A, Tax Map # 186.00-01-58 area variance for chicken coop and side fence.

~ Mr. Shilling came to the table to present his project.

The coop and the stockade fence are already in place. The stockade fence is there for privacy, the neighbor's garage is only a few feet away from the Shilling's property line. The fence is 6' to 8' tall in some areas because the land is sloped.

~ Jon Strom questioned the fact that the coop and the fence were already installed.

~ Mr. Shilling was unaware of the necessity for a permit.

~ Hilarie Thomas asked for a motion to accept the application and schedule a public hearing for next month, Michael Diperi made the motion, Jon Strom seconded, all agreed.

The application will be referred to the planning board.

- 2) **2014-16 Gray Davis**, Cove Rd. Tax Map # 165.14-1-15 Rear area variance for new house.

Mr. Gray came to the table. The lot is empty, the house will be set back close to the property line and will be barely visible from the road because of the low profile design.

The chosen location will allow keeping the existing trees.

The undersized lot is 1.93 acres, the planned house will be 1500 square feet. The property straddles R2 and R3 zones.

Mr. Gray owns the lot and designed the house.

The application was already presented to the Planning Board.

~ Hilarie Thomas asked for a motion to accept the application and schedule a public hearing for next month, Jon Strom made the motion, Michael Diperi seconded, all agreed.

4) Closed Public Hearing:

2013-26 Berkshire Mountain Club @ Catamount ski area. Tax Map #157.1-11.100

~ Jon Strom made a motion to have a re-vote on the Berkshire Mountain Club application.

~ Hilarie Thomas noted that based on the minutes of the September 25 meeting a re-vote was not accepted by two of the ZBA members.

~ Andrew Howard indicated that in fact a two/ two vote results in a non-action by the ZBA. He went on citing section 267-a of the New York Town Law that provides that a default denial occurs in the event “an affirmative vote of a majority of all members of the board is not attained * * * *within the time allowed* by subdivision eight”—that being 62 days from the closing of the public hearing on September 25, 2014—and that the “board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed *without being subject to the rehearing process.*” Following 13A the ZBA at the time of the vote did not have a majority of the board members.

~ Ken Dow agreed and indicated that it was his interpretation as well. A 2 to 2 vote is a non-action. The board is still within the 62 days’ time period.

~ Susan Sweeney; town board liaison, reminded the board that a motion that was seconded was on the table.

~ Hilarie Thomas wanted to have on the record that $\frac{3}{4}$ of the town board members were present at the meeting tonight.

~ Ken Dow clarified that a town board liaison had the right to participate in the meetings with the exception of voting.

~ Frank disagree with that statement. He indicated that a board liaison is an observer nothing more.

~ Jon Strom reiterated that he had made a motion that was seconded and would like the board to act on it.

~ Frank Peteroy read from the ZBA By-laws; Section 4.4 “A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.”

Ken Dow read a draft he wrote of the resolution to approve a special use permit;

November 20, 2014

To APPROVE a Special Use Permit for a Resort Hotel, pursuant to an application by Rock Solid Development, LLC, for a project known as the Berkshire Mountain Club at Catamount

WHEREAS, the Town of Copake Zoning Board received and has reviewed an application of Rock Solid Development, LLC, for a Special Use Permit Approval for a Resort Hotel project to be located on the

South side of New York State Route 23 adjacent to Catamount Road, known as the Berkshire Mountain Club at Catamount; and

WHEREAS, the application before the Copake Zoning Board includes the construction of a 153 unit, 256 bedroom facility, which includes a swimming pool, spa, restaurant, retail space, conference center space and related services and amenities; and

WHEREAS, units in such facility are to be sold in a condominium or time-share structure; and

WHEREAS, the Zoning Board conducted a duly noticed Public Hearing on the proposed Special Use Permit, which was opened on January 23, 2014, and was continued at regular meetings of the Zoning Board until being closed at the September 25, 2014 meeting of the Zoning Board, during which time interested parties were provided an opportunity to be heard on this matter; and

WHEREAS, the Copake Planning Board, as lead agency for SEQRA purposes, made on June 25, 2014, a determination in accordance with SEQR 6 NYCRR Part 617 that the proposed project will not have a significant adverse effect on the environment—a “Negative Declaration” for the proposed project; and

WHEREAS, the proposed project site to be developed on is located within the Residential (R) Zoning District; and

WHEREAS, a “Resort Hotel” is a defined term found in Section 232-3 of the Copake Code and is a permitted use in the R Zoning District, subject to obtaining a Special Use Permit; and

WHEREAS, by a duly enacted Resolution dated February 27, 2003, in relation to a prior application for a Resort Hotel project, the Copake Zoning Board determined, among other things, that “the use of the property as a resort hotel, if approved, will be the same whether the property is owned by a single legal entity or by owners of a condominium share or time share interests in the property” and that a proposed Resort Hotel project “may...be owned and operated under a condominium/time share format, which the Board finds to be consistent with the ownership and operation of a resort hotel and the provisions of the Zoning Code of the Town of Copake.”; and

WHEREAS, the Town of Copake Comprehensive Plan specifically anticipates the construction of a Resort Hotel at Catamount; and

WHEREAS, at a meeting of this Zoning Board on September 25, 2014, a motion for approval of a Special Use Permit for the project that is the subject of this Resolution resulted in two votes for approval and two votes against approval; and

WHEREAS, on advice of Counsel, such 2 – 2 votes constitutes a non-action and results in no determination having been made for approval or denial; and

WHEREAS, on advice of Counsel, were such 2 – 2 vote nevertheless be deemed subject to default denial, subdivision (13)(b) of section 267-a of the New York Town Law provides that a default denial occurs in the event “an affirmative vote of a majority of all members of the board is not attained * * * *within the time allowed* by subdivision eight” and that the “board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed *without being subject to the rehearing process.*”; and

WHEREAS, on advice of Counsel, the Board is therefore authorized to vote at this time, on motion and by simple majority, upon the application; and

WHEREAS, section 232-28(G) of the Copake Code sets out the standards for approval of a Special Use Permit, to wit: (1) There shall be no detrimental effect by the establishment of such use. (2) Such use will be in harmony with the district in which located. (3) Such use will be in conformance with the New York State Uniform Fire Prevention and Building Code and applicable local codes and ordinances.

It is hereby **RESOLVED**, that based upon the full review of the application and the consideration of public comments, the Zoning Board finds that the application meets the requirements of Sec. 232-28(G) of the Copake Code, and

It is further **RESOLVED**, that a Special Use Permit for the project is approved, subject to ongoing Fire and Building Code compliance, upon the record as a whole and the following, specifically:

- (1) The use and ongoing operation of the site as a Resort Hotel will not be detrimental, in that it is appropriate for the location and the plans have incorporated extensive measures to ensure that it is suitable for its location. The site already accommodates an active ski area, and the proposed Resort Hotel is complementary to that. In further support, the SEQRA negative declaration found no significant adverse environmental impacts, and two prior applications for Resort Hotels in essentially the same location were approved as Special Permit Uses by the Copake Zoning Board. The Board also notes that the abutting neighbors (the Alpers & Suisse Hutte) who have raised objections to the project have focused upon the construction issues and acknowledged that upon its completion (the establishment of the use), the use of the site as proposed will likely be beneficial, not detrimental, to their business. (2) It is in harmony with the district, in that the site is in immediate proximity to an active ski area, and other accommodations are located nearby. The Town Comprehensive Plan specifically contemplates a Resort Hotel at Catamount and further development at Catamount. Furthermore, a Resort Hotel is designated under the Copake Code as a Special Permit Use in such district, which the Court of Appeals has said "is tantamount to a legislative finding that [such] as use is in harmony with the general zoning plan and will not adversely affect the neighborhood." North Shore Steak House, Inc. v. Board of Appeals of Incorporated Village of Thomaston, 30 N.Y.2d 238, (Court of Appeals, 1972). (3) The project has been thoroughly evaluated by the responsible Fire District, and has been modified and made accommodations to the satisfaction of such Fire District. The Town Building Inspector has ultimate responsibility for determining compliance with Fire and Building Codes, and this project is therefore approved upon the condition of obtaining, as necessary, the Building Inspector's ongoing and final approval in such respects.

~ Hilarie has an objection to the Alper's position as stated.

~ Jeffrey Judd established that he is up to date and has reviewed the files for the project.

~ Jon Strom made a motion to vote on the special use permit for Berkshire Mountain Club, Michael Diperi seconded.

Roll call vote: Jeffrey Judd , YES.
Frank Peteroy ,NO.
Hilarie Thomas,NO.
Michael DiPeri,YES.
Jon Strom, YES.

~ Ken Dow stated that it is not necessary to orally articulate the written resolution.

~ Michael Diperi made a motion to adopte the resolution mentioned earlier, Jon Strom seconded.

Roll call vote: Jeffrey Judd , YES.
Frank Peteroy ,NO.
Hilarie Thomas,NO.
Michael DiPeri,YES.
Jon Strom, YES.

Special Use permit to build and operate a 153 unit Resort Hotel is granted.

~ Jeffrey Judd made a statement that he had reviewed all the documents pertaining to the application dating back to 1989. He has read the minutes dating back to Dec. 2013. He had a number of conversations with ZBA members as well as planning board members. He did a site visit with Bob Haigh, looked at all the plans. He visited the resort in the Catskills that is similar to what is proposed by Berkshire Mountain Club. He studied the definition issue “Resort Hotel versus Condominium”. He voted on the project with full knowledge of all the elements.

Internal business:

Dates for November and December 2015 Meetings;
November 19, 2015 and December 17, 2015.

*~ Motion to adjourn made by Hilarie, seconded by Michael Diperi, all agreed.
The meeting was adjourned at 9:20.*

Respectfully submitted.

Recording Secretary.
Veronique Fabio

