

**Town of Copake
Zoning Board of Appeals
Minutes-December 27, 2012**

Draft

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on Thursday, December 27, 2012, , at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of about 5 was present including Jeff Nayer Town Supervisor and Edward Ferrato Building Inspector.

The meeting was called to order by Chairman Frank Peteroy at 7:00 PM.

Roll call: Present at this meeting were: Frank E. Peteroy, , Glenn Schermerhorn , Michael DiPeri, Hillarie Thomas and Jon Strom.

Kenneth Dow; Copake Town Attorney was also present.

Minutes:

Frank asked for a motion to waive the reading of the November minutes and accept them with some revisions. Michael made the motion, Jon seconded, all in favor.

Correspondence:

Frank read the following correspondence.

- . 12-07-12-----from Michael higgings DEC to Erin Roberston in Ref. to 2012-19, Green.
- 12-07-12-----frpm NY Planning Federation to ZBA Members to update email list and reminder of annual conference April 21 to 23 2013.
- 12-8-12-----from planning board to ZBA in Ref. to 2012-18, Matschulat.
- 12-12-12-----from Emilee Drobbin to ZBA in ref. to resignation from the ZBA board.
- 12-24-12----- Memo from Frank Peteroy to Hilarie Thomas .

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 .

Mr. Kitchen came up to the table accompanied with Gordon Belt CPA. Mr. Belt passed around copies of Mr. Kitchen Tax return for 2010 and 2011. He proceeded to go through the documents line by line. He reconciled the tax returns schedule C and Mr. Kitchen's Quick books.

For 2010 a loss of \$ 31,633.00 on the 1040 schedule C form is shown. Mr. Kitchen's Quick books shows a loss of \$ 29,973.00 there is a difference of \$1,660.00 between the 2 documents, the amount is minimal.

For 2011 a difference of \$ 4,830.00 is noted, the amount is also minimal in Mr. Belt's opinion.

Jon expressed doubts about the financial viability of the business considering the \$ amount of the losses.

Mr. Kitchen explained that in 2011 he had quit his 55hour job to invest himself completely in the farm, he bought more animals which explains the increase \$ amount in feed.

Frank asked if Mr. Kitchen paid himself a salary and how does he handle the expenses of owning a home. Mr. Kitchen pointed out that his wife has a full time job outside the house. Expenses would decrease if he did not have to send his poultry out to be processed.

Frank asked if anyone had questions, being none Frank asked for a motion to close the public hearing, Michael made the motion, Frank seconded, all in favor.

Frank proceeded to feel out the SEQR form with Mr. Kitchen.

Frank proceeded to read a memo he wrote;

1. This is the year 2012. The Copake Zoning prohibiting slaughter house(s) was written in 1970-72 effective. That is 40 years ago.
2. The department of Ag. & Markets regulates issues, licenses, & inspects quarterly any operation over 1,000 birds or poultry units.
3. This is a Bon A Fide farm operation. "Pigasso Farms" dedicated to raising & selling farm products, for more than 5 years.
4. Dept. of Ag. & Markets requires that "all the poultry slaughter be raised on site".
5. The poultry processed would be sold on site, and to the market, only on site. Raised poultry can be processed. No import of poultry raised elsewhere.
6. Poultry processing is limited to 2600 units in an approved 8'x 45' converted trailer.
7. Application requires no CCPBD action, complies with item 20, memo 239, referral form, not over 10K ft.
8. Ag. & Markets permit issued @ 2 yr cycles. A Variance would be tied to the permit.

Frank made a motion to accept the SEQR negative declaration for environmental impact, Michael seconded, Glenn accepted the negative declaration, Jon is against it.

Roll call vote on the motion; Frank; YES, Michael; YES, Glenn; YES, Jon; NO.

Ken Dow clarified 267 b and read;

Use Variance;

b. No such variance shall be granted by a board of appeal without a showing by the applicant that applicable zoning regulations and restrictions have cause unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located.

i. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

ii. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district neighborhood.

iii. That the requested use variance , if granted will not alter the essential character of the neighborhood; and

iv. That the alleged hardship has not been self created.

Ken Dow pointed out that each factor had to be demonstrated by the applicant.

Frank proceeded to go through each point;

i. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

Jon stated that the financial statements have not proven that the business would be profitable. Glenn feels farming should be encouraged. Michael supports the creation of a small business. Frank feels any type of business has a potential for profit.

Frank; YES, Michael; YES, Glenn; YES, Jon; NO.

ii. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district neighborhood.

Jon stated that in his opinion the hardship is not unique every property owner in Copake is under the same zoning law. Michael feels it is unique. Glenn noted that animals in smaller numbers are slaughtered all over in and around Copake. Frank feels the hardship relating to the property in question is unique.

Frank; YES, Michael; YES, Glenn; YES, Jon; NO.

iii. That the requested use variance , if granted will not alter the essential character of the neighborhood; and

Jon reminded the board that some abutters were opposed to the project. Slaughtering is expressly forbidden in Copake, changing the zoning code is a very big step and Jon is against it. Michael, Glenn and Frank believe the size of the operation is such that it will not change the character of the neighborhood. The operation , if permitted, will be monitored by Ag & Market. The location of the trailer is ideal and the operation self contained. ; Frank; YES, Michael; YES, Glenn; YES, Jon; NO.

iv. That the alleged hardship has not been self created.

Jon believes that the hardship was self created; Mr. Kitchen should have researched the zoning code prior to purchasing the property. Frank and Glenn feel the market created the hardship.

; Frank; NO, Glenn; NO, Michael; YES, Jon; YES . .

The vote is split and the variance cannot be granted. Hilarie intervened and clarified that if you fail on any of the four points the variance is denied. Jeff Nayer explained further that

the law is such that the variance cannot be granted, an affirmative vote is necessary on each of the four points.

. The variance is denied

Mr. Kitchen wanted to make sure that he could legally set up a processing trailer on his pproperty and process under 1000 birds since his appeal to process more was denied. He was told to apply for a permit with the Building Department.

Frank suggested Mr. Kitchen reapplies for a use variance.

Ken Dow read from the ZBA by-laws;

6.9 Rehearing. Upon motion initiated by any member, and adopted by unanimous vote of the members present, but not less than a majority of all the members, the board shall review at a rehearing any order, decision or determination of the board not previously reviewed. Notice shall be given as upon an original hearing. Upon such rehearing, and provided that it shall appear that no vested rights due to reliance on the original order, decision or determination will be prejudiced thereby, the board may , upon concurrence of all members present.

2 #2012-18 ---1254 Lakeview Rd. Copake ,James Matschulat, Area variance requested for construction of support columns under existing deck & screen porch over afore mentioned deck within a100 feet of a body of water.(Robinson Pond).

Hilarie made a motion to open the public hearing, Michael seconded, all in favor.

Mr. Marschulat came to the table, he was made aware of the Planning Board letter in reference to his project. He said that some measurements of the porch on the site plan were taken by him and others by his architect, this explains the differences. The plan by the architect is accurate.

He noted a lot of inaccuracies in the memo from the planning board. He pointed out that no other lighting was planed besides what is already there. Mr. Matschulat has no landscaping project. The screen is set up on an existing deck that was built 35 years ago.

Mr. Matschulat has an approval from Taconic Shores for his project. TSA asked for a building permit, an engineer drawing and notification to his neighbors. All elements were fulfilled except for the building permit.

Frank noted that the planning board was looking for some more info on the plans.

Abutters were notified.

Frank asked if anyone had questions, being none, *Frank asked for a motion to close the public hearing, Jon made the motion, Hilarie seconded, all in favor.*

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: **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.

Roll call vote; Frank; YES, Michael; YES, Glenn; YES, Jon; YES

Area variance is granted.

New Applications

:

1 #2012-19----210 Island Drive Copake, Terence & Tamela Green, Tax Map # 165.06-01-59. Area variance requested for construction of a new deck, and addition of a carport (12x20) within a 150 ft of a body of water.

Erin Robertson, landscape designer and Mrs. Greene came to the table. Erin presented the project, the owners of the property want to replace the worn out present deck with a larger one and build a one car carport.

Mr. Ferrato's opinion is that a rear yard variance of 43' and 2" to the property line is needed as well as a rear and side yard variance for development and building a structure within 100' of a body of water.

Hilarie wants to see distances of planned structures from the water on the plans.

The project also includes extensive native planting as a buffer and to control erosion.

Installation of gutters is also planned, a storm water dry well was suggested to control water run off.

Michael questioned if the deck will be attached to the house or not. Erin noted that at this point no decision had been made, but she had explored the options for different type of piers in the ground.

Erin has a letter from Michael Higgins; DEC, were it is noted that no permit from the DEC is necessary for this project.

Hilarie suggested a smaller size deck to facilitate the decision of the board for a variance.

Application is accepted on condition that more measurements will be provided; it will be referred to the planning board. Erin agreed to submit new plans.

Hilarie made a motion to accept the application for a public hearing for next month, Frank seconded, all in favor.

2 #2012-20---Wagner , 103 Golf Course Rd. Tax Map #165.5-1-2, Area Variance; Add second story , square house off to even 26' wide.

Linda Chernewsky approached the table

Frank suggested a new survey with clear measurements of the foundation of the building. *Frank asked for the surveyor to shoot the existing building corners, that the board could use the dimensions from the plans submitted, must be a bonafide accurate survey.*

Linda feels that she's been asked for a lot; erosion plans, asbestos tests, construction plan...by the planning board.

The proposed house will be 26'x 36'. The planning board realized that there was an indent in the roof line and ask the applicant to apply for a variance. It is not only a replacement; the size of the project is larger than the existing house. The ZBA originally determined that no variance was necessary for a replacement on the exact same footprint.

.Abutters will have to be notified, no filling fee will be charged.

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

Application accepted, scheduled for a public hearing for January 24, 2013

Old Business

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* Discussion on training compliance & attendance. It was noted that 3 absences were permitted. In reference to training four hours per year are required.

Jeff noted that training was offered on line.

* Elections for next year's chairman and vice-chair.

Frank did not recall that reelection was held every year. Hilarie and Jeff agreed that the town board usually makes a recommendation for chairman and co-chair every year.

Ken Dow noted that the appointment was formally done by the town board.

There are 2 positions vacant for members as well.

Michael made a motion to nominate Hilarie as Chair Person, Jon seconded.

Jon made a motion to nominate Frank as Co-Chair, Glenn seconded.

A letter will be sent to the town board with the nominations.

Next meeting will take place January 24, 2013

Adjournment

Meeting was adjourned at 10:10PM.

Respectfully submitted.

Veronique Fabio

Recording Secretary