

Town of Copake Zoning Board of Appeals

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Meeting Minutes of February 26, 2015

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on February 26, 2015, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of about 25 was present as well as,

Edward Ferrato: Building Department, Bob Haight: Planning Board, Susan Sweeney: Town Board Liaison, and Jeff Nayer: Town Supervisor.

The meeting was called to order by Jon Strom at 7:00 PM.

Roll call:

Present at this meeting were: Jeffrey Judd, Frank E. Peteroy, Hilarie Thomas, Jon Strom, Kenneth Dow: Copake Town Attorney and Veronique Fabio: Secretary.

Michael Diperi was absent.

Reading and approval of the minutes of preceding meeting:

~ Jon Strom asked if all the members had read the January minutes.

~ Frank Peteroy indicated that some corrections were necessary and that he will send an email in reference to this matter.

Approval of the January Minutes is postponed until he next meeting.

Correspondence:

Review of the correspondence.

~ Jon Strom noted that the ZBA received a lot of correspondence in reference to the Ben Meir application.

02-06-15 From Marc Gross FOIL request in reference to Ben Meir's application.

02-12-15 From Bob Haight letter in ref. to special use permits.

02-13-15 From Paul Freeman additional doc. for Ben Meir as per ZBA's request.

02-16-15 From Susan Sweeney; request by the town board to address the special permit issue.

- 02-18-15 From planning board; review on Ben Meir application.
- 02-18-15 Eleven letters from residents around Rhoda Pond in reference to the Ben Meir special use permits.
- 02-18-15 Memo from Building department in reference to Ben Meir.
- 02-23-15 From Joe Luviene Architect in ref. to Ben Meir.
- 02-23-15 From Pollack, Pollack and Decicco Attorney at law in ref. to Ben Meir.
- 02-24-15 From Jared Scharf Attorney at law in ref. to Ben Meir.

Closed Public Hearing:

None

Public Hearing:

~ Jon Strom reminded everyone about the courtesy rules to observe during the hearing.

- 1) **2015-01, 22 Howard Dr. Tax Map# 186.-2-76.** Request for a special use permit to operate the property as a boarding house.
Paul Freeman representing Alon Ben-Meir came to the table.

~ Jon Strom asked for a motion to open the public hearing. Jeffrey Judd made the motion, Frank Peteroy seconded, all in favor.

~ Frank Peteroy indicated that his house in Copake is a bona fide B&B. His wife Marsha Peteroy is the hostess and sole proprietor since 1999. There are 3 rooms available. If anyone perceives a conflict he will step aside.

Paul Freeman answered that no conflict was perceived.

~ Jon Strom mentioned the Planning Board letter dated 2-12-15, where the residential or commercial status of the properties was in question and no recommendation could be made until that was determined.

~ Paul Freeman noted the 2-23-15 report from Joe Luviene “Architectural Bureau” Chatham NY. Mr. Luviene did a comprehensive review of the files and inspected the premises. An opinion was issued that it is a residential operation as per NY state building department.

~ Jon Strom noted that when the properties are offered for rent, they are available individually or as a package, appearing to be multiple dwellings.

~ Paul Freeman clarified that 3 separate applications were presented to the ZBA.

Each house is rented independently. A special use permit is requested for each structure.

That is not to say that one family may want to rent 2 houses, however each house will be leased independently.

~ Jon Strom and Jeffrey Judd, looking at Joe Luviene’s report, noted that it seems that change in use would imply change in building code for current use.

~ Paul Freeman noted that it is his position that it is not a change of use. The fact that the house is rented does not change its classification. A residential Certificate of occupancy was issued, it remains a residential structure not a commercial operation.

~ Hilarie Thomas asked if sales taxes are charged.

~ Paul Freeman said he did not know the answer to that question and whether or not sales taxes are charged it would not affect the residential classification of the property.

~ Jeffery Judd asked if the owner intended to modify the way he has been leasing the premises so far, offering the houses individually instead of as a compound.

~ Paul Freeman answered that the practice of renting through the internet will continue. Each house will be rented separately. It is possible that someone may want to lease all of them.

~ Hilarie Thomas noted that she saw on the internet that the properties were offered as a whole for large gatherings. Parking problems can arise. Is there a sufficient number of spaces offered to accommodate large group? How are the adjoining neighbors affected? It seems that the traffic increase could be detrimental to the other residents.

~ Paul Freeman answered that each house has its own driveway and plenty of room for cars. The spaces are adequate for up to 6 sleeping room homes.

~ Jon Strom noted that in the code one parking space is required per bedroom. He also indicated that in the zoning code “boarding houses” are not allowed in residential district hence the need to apply for a special use permit to allow a change of use. Jon mentioned the memo dated 2-18-15 from the building department.

~ Ed Ferrato Building and Code Enforcement Officer reads his memo.

The request for a Special Use Permit for changing a single family residence to a transient boarding house in a residential district will require a building permit for a “change of use”.

Upon issuing a building permit for a change of use of this nature it should be known to the applicant and to the zoning board of appeals that the following New York State Uniform Fire and Building Codes will need to be met.

1. It is considered to be a change from a “residential use” to a “commercial use” of the property.
2. The definition for “Transient” in the New York State Building Code is occupancy of a dwelling unit or sleeping unit for not more than 30 days. This is a change of use of the building.
3. The New York State Building Code refers you to the Existing Building Code of New York State Chapter 9 for this change of occupancy.

4. Without reviewing all of the necessary codes at this time tonight there are a few major items which the building will need to come into compliance with in order for this change in occupancy to take effect.
5. Examples are:
6. The building will need to meet the Fire Code and be sprinkled.
7. It will more than likely need to have fire alarm and detection system.
8. It will need to meet ADA accessibility compliance.
9. Accessibility for parking and signage requirements.

10. It will need to have at least one handicap accessible bathroom.
11. It will need to meet Means of Egress for the change of use.
12. Determining how many bedrooms are on file with the assessor's office and the size of each septic system will also have to be evaluated as to occupancy per building.

I have not reviewed the entire code compliance issues at this time but, these are a few of the items I did see with regards to this project.

It is my opinion that this is a commercial use based on the New York State Uniform Fire and Building Codes and that there will need to be compliance of these codes in order to receive a Certificate of Occupancy.

Building and Code Enforcement Officer

Ed Ferrato noted that Joe Luvieni's report is based on the original residential code applicable when the houses were built once the use is changed to transient boarding houses it is subject to chapter 9 of the building code.

~ Frank Peteroy commented that the 4 lots presented are under one name, one parcel is vacant, and the other lots are adjacent and have access to the lake. Listed on the applications there is a total of 14 bedrooms. They could all be used at one time, the lots are connected to each other, and this set up is a deliberate action on the part of the owner.

~ Paul Freeman corrected that the contiguous parcels are under different owners, one is an LLC, one is owned by 2 people, and one has a single owner. Each lot has a separate tax number, and each lot has its own stand-alone building. The applications could have been presented one at a time over a few months.

~ Jeffrey Judd asked if Mr. Ben Meir had the compound situation in mind when the lots were purchased.

~ Paul Freeman responded that he did not know the answer to that question, but it seems quite ordinary that different members of the same family would want to purchase homes close to each other. The fact that there are 4 properties should not be treated differently than someone who owns one a stand-alone property.

- ~ Hilarie Thomas noted that the surveys are all under one name.
- ~ Jon Strom pointed that the 4th house is under the name of Steven Rose but the address for that person and phone number are the same as for Ben Meir.
- ~ Paul Freeman indicated that they are not different owners per say but different entities.

~ Jon Strom read from the Copake Zoning Code to remind everyone what the issues are and what the ZBA has to take in consideration.

- 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.

Jon went on and stated that, the properties are marketed separately and also as a package, there might be on paper different entities owning the houses but we all know that there is only one owner. Ken Dow, the attorney for the town of Copake will look deeper into the matter. Jon invited the public to comment and noted that the majority of the letters received where not favorable to the project, one letter was supporting Mr. Ben Meir endeavor.

~ Neil Klein, former Economic Board Member, Copake resident for the past 20 years, he stated that;

- 1) The houses were never occupied by the owners, the purchase of the homes was never intended for residential use.
- 2) The way the houses were purchased clearly indicate that a commercial activity was planned.
- 3) Disturbances from noise and theft was experienced caused by the “guests “at the houses in question.

~ Kathy Siebert King stated that he is opposed to the project, in her opinion a boarding house implies supervised rental. Her experience is that no supervision is provided. The proximity of the lake is a liability, alcohol and water is a bad combination, it results in poorly supervised children and adults making poor decisions. Beer bottles and cans are thrown in the lake. Transients using the houses for a week end or a week do not care about the lake. Three years ago a couple of visiting women had to be rescued from the lake. They were stranded on deflating rafts.

~ Victor Goode of 42 Howard Dr. owns a house next door to the properties in question. He recommends that the special use permit not be granted. The transient rentals have been going on for over a year and a half. Density increased has been experienced, 30 or more people congregate sometimes in the yard of one single house resulting in noise increase. Liter on the lake was witnessed and Howard Dr. is a narrow road and the

increase in traffic is a safety issue. Property value will be affected, a business is ran next door. A transient boarding house is not in harmony with the area. The activity is detrimental and destabilizing. Homeowner have a mutual interest in the ecology of the lake and the quiet enjoyment and safety of their property and their neighbor's, transients do not. He feels that the boarding houses are a business and not in harmony with the community. It is harmful to the area and it does not meet the standards of the ZBA for granting special use permits.

~ Marc Gross stated that the bottom line is that the homes were acquired to create a commercial enterprise, it is changing the character of the neighborhood and the project is harmful to the area.

~ Priscilla Kerbin Price stated that her family owns a home on the lake since 1923. The situation is idyllique on Upper Rhoda Lake, transient do not care about the long term ecology of the lake, or the neighbors.

~ Norma Ramos of 42 Howard Dr. stated that she has experience first-hand the impact of the business on her house. It is no longer a quiet location and a radical and dramatic decline took place since the Ben Meir acquired the properties. Collective use of the houses is encouraged in the advertising. On one instance all the houses were rented on Upper Rhoda Lake as well as another one on lower Rhoda and buses were used to transport guests. She would have never purchase her property knowing this type of activity was going on next door. It is no longer a quiet lovely community. She had witnessed poorly supervised children on the lake, and bottles and cans on the shore. The complaints addressed to the Ben Meir staff are received with more and more hostility.

A lake association was created to organize a response to the present activity.

~ Mrs. Ramos read through Joan Perkell statement; she has been in the community for 27 years. She has experienced renters that do not respect the property lines or the privacy of floating decks. Liter in the lake and the speeding on the road was observed. The nature of the community has to be preserved.

~ Mrs. Ramos concluded that if the ZBA grants the permit it will send a message that the town of Copake does not stand by its zoning code and its alignment with the vision for the town.

~ Jared Scharf resident for the past 10years stated that his experience with transients has been negative. The separate ownership of the properties is not significant, the problem is the common effort to rent the 4 properties.

~ Lindsay LeBreck of Copake Lake Realty questioned how a decision by the ZBA will affect other property owners that want to rent their homes. She stated that rentals work, it allow people

to experience the Copake area and gives a boost to the local economy. The renters come back and purchase homes in the area.

~ Hilarie Thomas responded that a decision on one property does not necessarily affect another one.

~ Bob Haight from the Planning Board speaking as a contractor commented that under the Copake Building Code if a home is qualified as a transient home it is not a residence and under the NY state building Code a boarding house falls under a totally different classification. It is considered a commercial operation and the comprehensive plan states that no more commercial activity are allowed on Upper Rhoda Lake.

~ Mr. Neal Klein added that the comprehensive plan is a long term plan that was created to protect the rural nature of the area and to protect the property value on Upper Rhoda Lake and the tax base.

~ Richard Schumann stated that he is a contractor and has been working for many owners that rent their properties as well as for Mr. Ben Meir. Many people are benefiting from this type of activity as well as the local economy. He stated that “we need this renting community”.

~ Jon Strom indicated that the ZBA is reviewing each application separately and a decision will be made for a special use permit at a time. The decision will not affect other property in the area.

~ Jason Warner a local contractor commented that he gets plenty of business from local owners and has refused to work for Ben Meir in the past.

~ Al Fair realtor with Country Realty stated that homeowners do benefit from being able at time, to rent their property.

~ Jon Strom clarified that the ZBA does not write the rules, whatever decision is made by the ZBA on one specific property does not affect others.

~ Mrs. Ramos reassured the audience that the economy of Copake will not collapse if the special use permits are denied. Home owners do spent money locally and they hire contractors.

~ Jon Strom commented that more time is needed for the ZBA to make a determination.

~ Hilarie Thomas asked for updated septic systems inspections. The information presented in the Joe Luvieni's report is dated from 1981. Bob Haight concurred that inspections will have to be done.

~ Harvey Weber mentioned that Taconic Shores requires that the owners present a proof that their septic tank was emptied out on regular bases.

~ Mrs. Ramos asked about the integrity of the underground oil tank at 22 Howard Dr.

~ Richard Schumann mentioned that as of 2014 the house was converted to propane and the oil tank was evacuated.

~ Lindsay LeBreck explained to Paul Freeman the process for the septic system inspection.

The necessity for a referral to the County Planning Board was discussed by the ZBA members. The applications do not need a referral.

~ Jon Strom asked for a motion to continue the public hearing at the next session, Hilarie Thomas made the motion, Jeffery Judd seconded, all in favor.

~ Paul Freeman pointed out that Joe Luvieni was present and if the board had any questions now would be a good time.

~ Joe Luvieni offered to meet with the Ed Ferrato from the Building Department.

A discussing went on between the ZBA members , Ken Dow town attorney , Joe Luvieni, Ed Ferrato and Paul Freeman in reference to the terms "Boarding house and transient". Joe Luvieni suggested a meeting Joe Mc Graph, Ed Ferrato and himself.

3) New Application:

1) 2015-03, 2117 County Rt. 7 Tax Map # 186.-2-29-112 Owner; Steven Rose represented by Paul Freeman attorney at law requesting a special use permit.

~ Jon Strom asked why it was presented separately from the others.

~ Paul Freeman stated that each property is owned and marketed separately.

Abutters on the adjoining properties and across the road will be notified of the public hearing.

~ Paul Freeman indicated that to respond to the issue of provisions to protect abutting neighbors;

* Signs were posted recommending the renters to keep the noise levels down.

* The terms of the rental agreements were modified and the details of the town's noise ordinances were incorporated. A copy of the rental agreement will be provided.

* A property manager is on call 24 hours a day, he resides within 15 minutes of the property.

* A maintenance crew is at the property on regular bases, and is also available to contact in case of incidents.

* The rental agents were changed and they are aware that the owner intend to rent to individual families instead of large gathering for parties.

The owner proposed to install a fence between the properties # 22Howard Dr. and # 24. A request for a variance could be added to the application.

Paul Freeman indicated that generally someone is on site daily.

Photos, septic and parking spaces details will be provided for the next meeting.

The application is accepted for a public hearing March 26, 2015 and will be referred to the Planning Board.

2) 2015-05 1170 Lake View Rd Taconic Shores Tax Map # 176.1-3-48

Owner Henry & Barbara Ginsberg. Variance for 10x14' addition, roof on a deck and a new dock; the project is within 100' of Robinson Pond. Jason Werner of JW Construction represents the owner.

~ Mr. Werner indicated that his is waiting for a DEC permit. The property is located at Taconic Shores. Two issues are presented, building an enclosure on an existing deck and a new dock and fence. The dock and fence are already built. The deck is located 75' from the lake.

~ Frank Peteroy informed the applicant that the board needs a site plan showing the project and the distances from the shore as well as the dock.

~ Ed Ferrato noted that the project is enlarging a non-conforming structure.

The application is accepted for a public hearing March 26, 2015 and will be referred to the Planning Board.

2) 2015-06 , 157 North Mountain Rd. Copake Falls. Tax Map # 167.1-25

Owner Joan Spencer. Variance to convert a shed to a chicken coop.

John Spencer comes to present his project. He wants to convert an existing shed into a chicken coop. The shed is located 65' from the property line. He will not house rosters.

The application is accepted for a public hearing March 26, 2015 and will be referred to the Planning Board.

Internal business:

~ Jon Strom mentioned the email from Susan Sweeney town board member dated 02-16-15 in reference to changing the handling of special permits by the Planning Board rather than the ZBA.

~ Jeff Nayer explained that the topic was discussed at a prior town board meeting and suggested that the ZBA gave its opinion on the subject. It is a discussion that took place already years ago when Mr. Nayer was chairman of the ZBA, no changes were made at the time.

~ Jon Strom noted that the members will discuss the topic. He indicated that one town board member had already made a decision on that matter without waiting for the ZBA's opinion. He will send an e-mail directly to Susan since she had already left the ZBA meeting tonight.

~ Hilarie Thomas asked Jeff Nayer if the town board had already made a decision on the matter.

~ Frank Peteroy commented that the checks and balances would be jeopardized. The municipal laws indicated that special use permits should be in the hand of the ZBA.

~ Jeffrey Judd asked about the history of this change of hands idea.

~ Jeff Nayer explained that at the time the planning board had a lot of power and it was decided to keep the matter under the ZBA.

~ Ken Dow noted that who handles the special use permit is a local law and the town can change the law.

~ Hilarie Thomas agrees with Frank and Jeffrey, she feels that the 2 boards coordinate the reviews on the special use permits, in most of other towns in the area the ZBA takes care of the special use permits. She pointed out that the ZBA form does not include details for special use permits.

~ Jon Strom agreed and a decision will be discussed and forwarded to the town board.

~ Bob Haight opinion is that the ZBA is for appeals, special use permits are an allowed use and just an administrative procedure not a judicial one.

A letter will be sent to the town board asking for an extension on the decision for special use permit.

*~ Motion to adjourn was made by Jon Strom, seconded by Hilarie Thomas, all agreed.
The meeting was adjourned at 9:30.*

Next meeting March 26, 2015

Respectfully submitted.

Recording Secretary.
Veronique Fabio

