

# Town of Copake

## Zoning Board of Appeals

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Please note that all referenced attachments comprising 12 pages, are on file with the Copake Town Clerk and in the Zoning Board of Appeals office. Annotated listings of those attachments appear at the end of this document.

### Meeting Minutes of February 27, 2014

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on February 27, 2014, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. An audience of about 25 was present as well as, Marcia Becker: Planning Board and Edward Ferrato: Building Department. Susan Sweeney: town board liaison was excused. The meeting was called to order by Hilarie Thomas at 7:10 PM.

#### Roll call:

Present at this meeting were: Ralph Shadic, Frank E. Peteroy, Hilarie Thomas and Michael Diperi. Adam Resnikoff and Jon Srom were excused.

Kenneth Dow: Copake Town Attorney was 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 January 23, 2014 minutes and approve them, Michael Diperi made the motion, Frank Peteroy seconded, all in favor.*

#### Correspondence:

Hilarie Thomas acknowledged the following correspondence and will review it during the hearing for Berkshire Mountain Club.

-January 22, from Columbia County Planning Board in ref. to Berkshire Mountain Club.

-January 23, and January 25, from Susan Sarlin , 610 Breezy Hill Rd., Email in ref. to the Berkshire Mt. Club project.

-January 25, from Paul Hoffman in ref. to Berkshire Mt. Club Project.

-February 10, from DEC in ref. to Berkshire Mt. Club Project.

-February 11, from CC Planning Board; revised recommendation for Berkshire Mt. Club project (Number of units corrected to 153 units with 256 bedrooms)

-February 18, from David Silver forwarded by planning board in ref. to Berkshire Mt. Club project.

-February 21, from Hillsdale-Copake fire district in ref. to Berkshire Mt. Club project.

-February 24, from Herman Sedele, he has power of attorney for Linda Breen owner of Linden Valley Inn.

#### Closed Public Hearing:

None

**Public Hearing:**

**1) 2014-01. Lois and Larry Nipon, 12 Grant Drive. Tax Map # 165.15-1-49**  
Area Variance, front yard of 29.8', rear yard 33.8'.

*Hilarie Thomas asked for a motion to open the public hearing, Michael Diperi made the motion, Frank Peteroy seconded, all in favor.*

**Linda Chernewsky came to the table, she represents the owners Nipon.**

**Hilarie read the memo from the Planning Board:**

"Applicant proposes a major renovation to a non-conforming structure.

Message:

At the January 11, 2014 Planning Board meeting the Board reviewed the Nipon application and unanimously approved this Site Plan subject to receipt of a stamped letter from a licensed Engineer confirming that the septic system is in good working order and that it can handle the burden of the proposed use and resulting affluent output to health standards. Site Plan approval is also subject to the granting of a height variance and side yard variance by the ZBA."

**Linda Chernewsky presented a letter from Morris Associates, engineering consultants in reference to the septic system inspection at the property in question.**

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

**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**

*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.**

**The board tonight will vote on;**

- 1) A front yard set back variance of twenty nine point eight feet (29.8').**
- 2) A rear yard set back variance of thirty three point eight feet (33.8').**

**Roll call vote; Ralph Shadic, YES. Frank E. Peteroy, YES. Hilarie Thomas, YES. Michael Diperi, YES.**

**Variance granted for the purpose of building a partial second floor, a front entry porch, a walking deck and a covered side porch attached to existing home.**

**2) 2013-26 Berkshire Mountain Club @ Catamount ski area. Tax Map #157.1-11.100. Special use variance, for a 3 building resort hotel project.**

**Present were; Pat Prendergast Engineer, Harry Freeman from Rock Solid Development, Andrew Howard Esquire.**

**Hilarie stated that this meeting is a continuation of the previous public hearing opened January 23, 2014.**

**Hilarie read the following correspondence;**

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-February 27, from the Town of Egremont MA Planning Board.

~ Paul Schlesinger questioned the size of the project that the County Planning Board was referring to in their letter.

~ Terence S. Hannigan of Hannigan Law Firm, representing the Hillsdale / Copake fire district took the stand and read a letter stating the concerns of the fire department. The main problem is that the fire department has insufficient information about the project and fundamental details are lacking. How tall is the building? Where are the staircases? What materials will be used for the construction? Access to the North side of the building as well as the access to the location of off route 23 are now different from the previous plans. Fire trucks apparatus and aerials have to be located away from the possible collapse zone at approximately one and a half time the height of the building; the height of the building is not known. Will the roofs be equipped with automated roof scuttles as in the prior plans?

The necessary volume of water in case of a fire has to be calculated taking all these details in consideration. The fire department wants to be in position to assure the safety of the public and the firefighters.

~ Mr. Freeman responded that he looked forward to working with all the fire agencies, that he had provided documents when requested and that he was at their disposition for meetings. The building will have automated sprinklers and alarms, the units will be compartmentalized, fire wall between each apartment. The building will be built at the highest safety standards in the industry.

~ Edward Ferrato noted that March 11 at 2PM a code review meeting will take place at the Copake Town Hall.

~ George Beneke fire commissioner for the Hillsdale fire department indicated that the fire agencies have no veto power and cannot stop any project even if they feel it is not safe. The only recourse they have is to voice their concerns to the town, the Building Department, the ZBA and the Planning Board. They just want to make sure that all aspects of fire safety will be considered.

~ Hilarie stated that the ZBA when voting on variances take in consideration the health, safety and welfare of the community.

~ Paul Schlesinger asked about the training of the volunteer fire fighters for this type of building. Is there a structure for them to experience the height and size similar to the project?

~ Terry Hannigan indicated that whatever training is necessary it will be handled by the fire department.

~ Donald Pulver from the town of Egremont planning board commented that the Egremont fire department is located 1.5 mile from Catamount and will be most likely the first responder in case of an emergency. Also the town is very concern with the impact that the traffic going east on Route 23 will have on the town. At this time they do not have any site plans or traffic analysis for the future project. The town would like to make recommendations for the project based on concrete information that is not yet in their possession. The town requests a site plan and a traffic study from the developer in order to make suggestions.

~ Andrew Gilchrist attorney representing Mr. and Mrs. Alper of the Suisse Hutte, indicated that Mrs. Linda Breen, an abutter, is also looking for legal representation. Mr. Gilchrist distributed documents to the board members.

Andrew Gilchrist commented that at the January meeting, the description by Mr. Prendergast of the project appeared very similar to the previous project (Neopolis project). The current project will use the previously designed and approved water treatment, waste water treatment and storm water controls. The parking and lighting is essentially the same as well. Rock Solis Development is seeking a simple re approval of the prior project. In this regard, an examination of the records of the prior project, including SEQRA (State Environmental Quality Review Act) compliance and municipal approvals is warranted.

An intricate part of the prior approval was a written agreement between Neopolis, Catamount and the Alpers which included a number of binding terms and conditions. There was an agreement to transfer certain portion of real property for the purpose of required road improvements, emergency access and routing of construction and heavy equipment vehicles as well as future truck deliveries to the hotel resort.

The agreement was incorporated as an express condition to the site plan approval by the Copake planning board. Mr. Gilchrist wants the ZBA to take in consideration the agreement if the project is being presented as a re approval. Mr. Gilchrist has been in contact with Andrew Howard but is at an impasse as the current developer seeks to take advantage of prior approvals issued yet do not want to be obligated by the prior agreement with the Alpers.

~ Mr. Alper stood up and read a statement to introduce himself and his business; the Suisse Hutte Restaurant & Hotel and to voice his concerns regarding the noise and disturbance that will be created during the construction of the resort. Mr. Alper also noted the lack of consideration from Catamount employees when removing snow on the parking lots in the middle of the night making it impossible for the guests at the Suisse Hutte to get a good night sleep.

~ Mrs. Linda Breen of Linden Valley Inn indicated that she had never met the Developer for the new resort project and it appears that a stream has been diverted and her pond went dry.

~ Ed Ferrato said that he has directed Mrs. Breen's brother to the DEC in order for him to make a formal complaint.

~ Eileen Vining formally on the town of Egremont planning board shares Mr. Pulver concerns regarding the traffic impact to the area. She suggested the developer hold an information meeting in the town.

~ Jeff Nayer Copake Town Supervisor noted that there are two different boards involved; the Planning Board and the Zoning Board, each board will address some of the concerns of the citizens.

~ Ken Dow indicated that in order to grant a special use variance the ZBA will have to evaluate if a resort hotel is an appropriate development in that location or not. There is going to be dual reviews from both boards on similar details.

~ Mr. Gilchrist inquired about the status of the SEQRA and who was the lead agency, the public hearing will remain open until the SEQRA final determination is completed.

~ Hilarie indicated that there will be no site plan review if the ZBA does not grant the special use permit.

~ Frank Peteroy presented a schematic addressing the bulk of the building in comparison to the old Roe Jan school building in Copake. The building planned will be 340 feet long and 65 feet high in comparison the old school is 275 feet long for 45 feet high. That gives an idea of what the fire department will have to deal with.

~ Hilarie asked to see more information on the zoning compliance schedule, what was granted previously? She is concerned with the lack of information from the developer to the abutters. The increase in traffic during the construction is a real problem and will significantly affect the Alpers and Linda Breen.

~ Andrew Howard noted that the developers intend to use the public roads available to them. He added that a complete report was just completed by an engineer hired by the town of Copake.

He pointed out that the prior approved project was much larger; the foot print of the current project has been significantly reduced. All details will be made available to the fire departments.

~ Paul Schlesinger had a question about the financing of the project. Ken Dow indicated that this information was not relevant for the granting of the variance.

~ Harry Freeman responded that the presale process is going on now and the banks will require a certain number of units in contract before breaking ground is allowed. So far the feed back has exceeded the expectations.

Frank Peteroy presented a letter with a number of items to take in consideration:

Letter dtd 11 Dec '13, BMC@CSA, Project #13799; App # 2013-26

Special Use permit, conditional, resort/hotel use acceptable.  
App change - site area change - [original - 20ac vs 10ac present];  
prior project included fire access road from NYS Hwy 23, landscaping plan, & fire lanes around buildings [ Appendix D, Sec D104, NYSFPC, requires aerial ladder truck for bldgs over 30 ft ]...  
consider this a new application.

App dtd 11Dec'13, is inconsistent & inaccurate:  
\*ltr 11Dec'13 notes 3 bldgs plans show 4 vs 3 in ltr, 'use' of # 4 ?  
\*App notes 125 units, ltr 31jan'14, Creighton/Manning: 153 units  
\*Plan 2A - notes floor area [bldg #1] as 25,731sf, math makes floor area footprint for bldg #1 - 27,200sf.

Public safety, health & welfare - fire scenario. As a reference for methodology , ref: 'NFPA101', while it deals with building safety only, it offers '8 scenarios' to judge hazard solutions.  
Only one scenario for this concern is necessary - one vehicle stalled or otherwise sideways on the only bonafide access road. Note that:

Nicholson road is an unpaved gravel road. Commonwealth of Mass issued a manual 2001, 106pgs, Berkshire Cty, posted 2/27/13...  
"Unimproved Roads BMP Manual",... best management practices.


3 options available for emergency fire/ems access road > sta/map

Lot area 9.9 acres, 431,244 sf , zone R permits 20% lot coverage = 86,249 sf... Bldgs 53,650 sf + b/t is approx 128,000 sf = 181,650sf  
difference is 95,401 sf +/- in excess of allowable. [DCS/&/SCOZ]

Lot can be classed as a 'rear lot' [232-8,N,[1], open development.  
Right of way requires [must provide] safe access for fire, police, & emergency vehicles per 232-8, N,[3][d],  
Further, 232-8,N,[3][e], must not result in damage to ...scenic views.

Bulk of Bldg # 1 is 340 ft long by 80ft deep, by approx 55/60 ft high.  
Ref - bulk schematic elevation.  
require front elevation adjusted to roof pitch & average grade for height determination, & indicating the ground floor, entry level.

Permission to introduce the proposed bldg [#1] floor plans from web site, for the purposes of clarifying room count 103 [2A] vs 108 [web] which may or may not affect calculations for utilities & fire safety.

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~ Frank Peteroy commented on the position of the building and the access to the back of the building for the fire department. Having sprinkler systems does not alleviate the need for access from the back.

~ Harry Freeman responded that even with an access road a fire apparatus could not safely park behind the building if you respect the time and a half the height of the building rule.

~ Frank Peteroy debated that in his opinion given the size of the building the fire department would have a difficult time accessing a fire above the pool in the back and in the middle of the structure.

~ Harry Freeman noted that he had discussion with fire protection agencies and the developer was willing to fund training taking in consideration the novelty of this type of building for the local fire departments.

~ Harry Freeman noted that one of the buildings appears to be 2 separate structures only because the design created a bridge going over a drainage stream. The plan is for 3 buildings not 4.

~ Prendergast indicated that landscaping plans will be provided following a comment from Frank Peteroy about the view from the Suisse Hutte being altered by the buildings. The public hearing is held open the next hearing will take place on Thursday March 27, 2014.

**New Applications:**

None.

Meeting was adjourned at 9:10

Next meeting; Thursday March 27, 2014

Respectfully submitted.

Recording Secretary.  
Veronique Fabio

