

Town of Copake Zoning Board of Appeals

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Meeting Minutes of March 26, 2015

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

An audience of about 6 was present as well as,

Edward Ferrato: Building Department. Bob Haight: Planning Board.

Susan Sweeney: Town Board Liaison was excused.

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

Roll call:

Present at this meeting were: Frank E. Peteroy, Jon Strom, Michael Diperi, and Kenneth Dow: Copake Town Attorney.

Veronique Fabio: Secretary was present to record the minutes.

Jeffrey Judd, and Hilarie Thomas were excused.

Correspondence:

Review of the correspondence.

~ Jon Strom read the 03-14-15 memo from Jeff Nayer in reference to ZBA members' training and asked the members to follow the required yearly 4 hours training sessions.

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

02-26-15 From Marc Gross , supplement to his 02-23-15 letter.

02-27-15 From John Gisondi opposing to ben Meir application.

02-25-15 From American Society of Landscape Architects publication.

02-27-15 From Sue-Jane Kerbin Evans opposing to ben Meir application.

03-02-15 From Richard Schumann Jr. in favor of the Ben Meir project.
03-04-15 From Julie Cohen R. Estate in ref. to Ben Meir.
03-10-15 From Eugen Mandel in ref. to Ben Meir.
03-12-15 From Paul Freeman; attorney for Ben Meir requesting the public hearing to be postponed to April 23r.
03-21-15 From Rochelle Edelson in ref. to Steven Rose application.
03-01-15 From Jeffrey Judd; He will not be able to attend the March meeting, his opinion on the Special use permits matter .
03-14-15 From Planning Board referrals for Ben Meir, Steven Rose, Gingsberg and Spencer.

Reading and approval of the minutes of preceding meeting:

~ Jon Strom asked if all the members had read the corrected January minutes and the February minutes as well.

~ *He asked for a motion to accept the January and February minutes, Michael Diperi made the motion , Frank Peteroy seconded, all in favor.*

Closed Public Hearing:

None

Public Hearing:

~ Jon Strom mentioned that the continuation hearing for the three Ben Meir applications has been postponed to April 23 at the request of Paul Freeman who represents Mr. Ben Meir.

However the public hearing for a fourth application is going to be open tonight.

- 1) **2015-03, 2117 County Rt. 7 Tax Map # 186.-2-29-112** Owner; Aron Ben Meir, LLC Steven Rose, represented tonight by Aaron Depaolo, attorney at law, requesting a special use permit for boarding house.

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

~ Jon noted that the special use permit request is the same as for the three other properties that were presented in February.

~ Mr. Aaron Depaolo indicated that the request to postpone the hearings was necessary in order to provide the ZBA with information on the septic system's condition. The frozen ground does not allow digging for inspection of the tanks. He specified that the property in

question today was acquired on November 2014, it was never rented out and was never listed on VRBO. It was purchase for one of Mr. Ben Meir six children to vacation in and might eventually be rented when not used by the family.

~ Jon Strom asked Ed. Ferrato about the progress of the building Department on this matter.

~ Ed Ferrato indicated that he did not have the opportunity to discuss anything yet with Joe Luviene or Joe McGraph. A meeting is planned for next week.

~ Jon Strom noted that the house on the application presented tonight is owned by Mr. Ben Meir as well. He mentioned the Planning Board discussion regarding the residential versus commercial aspect.

~ Ken Dow explained that this “residential versus commercial aspect” can be very technical and ambiguous. He stated that the same term can have different meanings in different areas of the law. A boardinghouse is listed as residential use within the Copake zoning code (Chapter 232). At the same time in the code, the term residential requires permanent occupation of the premises. Going back to the definitions in the code, boardinghouses should also include tourists’ houses. Compliance to the fire and safety codes are not a ZBA matter but a Code Enforcer issue.

~ Jon Strom quoted the Planning Board recommendation for the application:

“The Planning Board suggested that the ZBA make sure they have very complete applications with all the information on them so they can conduct a thorough review of the site. Mr. Grant hoped that a Special Use Permit isn’t granted until the buildings comply with the building code to protect the health, safety and welfare of the community and if they don’t comply a Special Use Permit should not be granted.”

~ Jon remarked that the Planning Board comment seems to be conflicting with what Ken Dow just said.

~ Frank Peteroy asked Aaron Depaolo if any construction had been done since the property was purchased.

~ Aaron Depaolo responded that the house has been owned by Ben Meir for only a few months and he did not believe anything was built. He recapped the items required by the ZBA for the next meeting; Septic system inspections and Pictures of the houses.

~ Jon Strom asked if anyone in the audience had comments.

Explanations were made in reference to the ownership of the property by a limited liability corporation owned by Mr. Ben Meir.

~ Lindsey Lebreck questioned the requirement for sprinkler systems, how will other homeowners be affected if that kind of decision is made.

~ Ken Dow clarified that fire and safety issues are not the ZBA’s concerns but a building department code issue. The zoning board is here to regulate the use of land.

~ Jon Strom pointed out that in the Copake Zoning Code it states that” the ZBA shall assure itself that such use will be in conformance with the New York State Uniform Fire Prevention and Building Code” .

~ Ken Dow agreed but indicated that the final decision depends on the expertise of the building Department.

Jon asked that the members be allowed to go on site and look at the properties.

~ Jon Strom asked for a motion to accept the application for public hearing on April 23, Michael Diperi made the motion, Frank Peteroy seconded, all in favor.

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.

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

Jason Werner of JW Construction represents the owners.

~ Mr. Werner indicated that he had received the two DEC approvals, one for improvement within 100 feet of water and the other one for the dock and fence. He gave copies of the approvals.

~ Jon summarized the planning Board referral;

“ No digging was planned for the enclosure of the deck. The fact that a specific section of the code states that an open deck is exempt from the one-hundred foot (100’) set-back from a water body and part of that exemption states that it shall never be enclosed. The Board did not have issues with the enclosure as it is approximately seventy-five feet (75’) from the water line. “

~ Mr. Werner explained that the fence and dock are already built. The DEC sent its consent form, it will issue the permits after approval from ZBA, and Planning Board and building permits are obtained. The fence was built before he was involved with this project, the fence is 3” tall.

The enclosure on the existing deck will be a three season room, with glass panels all around built directly on the decking boards.

There are no comments from the abutters.

~ Frank Peteroy asked about the purpose of the 3” tall fence.

~ Mr. Werner answered that it holds back dirt. He also indicated that Taconic Shores are up to date with the project.

~ Jon Strom asked for a motion to close the public hearing, Michael Diperi made the motion, Frank Peteroy seconded, all in favor.

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

Jon Strom 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

Jeffrey Judd disagree and he indicated that the house could have been replaced in the same location, following the same foot print therefor no variance would be necessary. Linda responded that 2 lots were combined and the proposed house is improving the existing conditions, also the new house will be farther away from the lake.

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.

Tonight the ZBA is voting on an area variance for:

Section 232-9 P. (1) Development to within 100' of the water.

Section 232-24 B (2) (a) [2], modification of a non-conforming structure.

Relief from the density control schedule for a rear yard area variance of 28.9'

Roll call vote: Frank Peteroy; YES Jon Strom; YES Michael Diperi; YES

Area Variance is granted

3) 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.

Mr. Spencer was absent, hearing is postpone to next meeting on April 23.

3) New Application:

2015-07, 167 Golf Course Rd. Tax Map # 165.5-1-14 & 17. Owner Pritchett /Casey.
Area Variance to build a new home replacing and existing one, work within 100feet of Copake. Lake.

~ Mark Rowntree of Cosmo Design Factory represents the owners.

The project consist of demolishing the existing house on a non-conforming lot and build a new one further away from the water line. The new house will cover 18% of the 25% allowed. Most of the house will be kept to the center of the lot. The house will be outside the existing foot print.

The house will be moved away from the lake and the trees will be kept. The existing sewer line easement will have to be moved in order to build the house at the proposed location. Silt fence and erosion control netting will be installed during construction.

The sewer line easement will have to be rerouted following Crawford's advice instead of building the new house over the sewer line.

Mark Rowntree presented a detailed plan of the trench, and the sanitary manholes.

- ~ Frank Peteroy asked about the process for the sewer change. How will it affect the other residents on the same line? Will additional pumps be required?
- ~ Mark Rowntree answered that the system will remain gravity fed. Andy Alben of Crawford & Associate designed the proposed sewer system. The project has been presented to the homeowner's association and a meeting will be set up if necessary. He hopes that the issue will be resolved before the next ZBA meeting.
- ~ It was asked that Mr. Rowntree provides the ZBA with a step by step plan of the sewer system displacement for the next public hearing. It was indicated that the house will be 35 feet tall.
- ~ Mr. Rowntree has started the process with the planning board.

- ~ *Jon Strom asked for a motion to accept the applications for a public hearing for April 23, Michael Diperi made the motion, Frank Peteroy seconded, all in favor.*

Internal business:

Continuation of a discussion that was started at the previous meeting in reference to a change in the handling of the Special Use Permits by the Planning Board instead of by the ZBA.

~ Jon Strom read Jeffrey Judd's email in reference to the matter.

" I share Hilarie and Frank's concerns re: concentration of power/checks and balances, and conclude, consistent with prior deliberations of this board (as then constituted), that Special Use Permits should remain under the jurisdiction of the ZBA. I respect Bob Haight's concerns, and welcome input on reasonably streamlining procedures. Upon review of the Zoning Code, Article I, I feel that the ZBA is currently the only appropriate venue for Special Use Permit applications. You may read this e-mail into the record in my absence."

~ Jon indicated that all the members should be present to make a decision and suggested that the board postpone the discussion to next meeting.

~ *Motion to adjourn was made by Jon Strom, seconded by Michael Diperi, Frank Peteroy
Seconded, all agreed.*

The meeting was adjourned at 9:30.

Next meeting April 23, 2015

Respectfully submitted.
Veronique Fabio
Recording Secretary.

