

Town of Copake Zoning Board of Appeals

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Meeting Minutes of March 27, 2014

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on March 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, Edward Ferrato: Building Department and Susan Sweeney: Town Board Liaison. The meeting was called to order by Hilarie Thomas at 7:30 PM.

Roll call:

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

Kenneth Dow: Copake Town Attorney was present.

Veronique Fabio was present to record the minutes.

Hilarie indicated that the board tonight did not have a quorum, therefore no voting could take place. Adam Resnikoff is an alternate member and he cannot vote. The town board is working on changing the bylaws and next month the alternate will be able to partake in the ZBA decisions as well as other members.

Reading and approval of the minutes of preceding meeting:

Hilarie Thomas asked for a motion to waive the reading of the February 27, 2014 minutes and approve them, Frank Peteroy made the motion, Jon Strom seconded, all in favor.

Correspondence:

Hilarie Thomas acknowledged the following correspondence, she indicated that copies were available to anyone requesting them.

Please note that all referenced attachments comprising 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.

Feb. 28 : from Town of Egremont Planning Board in ref to Berkshire Mountain Club.

March 6 : from Prendergast, landscaping plan for Berkshire Mountain Club.

March 9 : from Mrs O'Neil GB. Mass. in ref to B.M.C.

March 10 : from A. Gilchrist attorney for the Alpers.
March 17 : from DEC summary on climate.
March 18 : from Egremont planning board.
March 19 : from Andrew Howard.
Memo from Jeff Nayer in ref to ZBA members training.
March 25 : Updated plans for B.M.Club.
March 25 : Traffic Impact Study for B.M.Club.

Hilarie mentioned that the ZBA just received notice that Linda Breen Owner of Linden Valley Inn is represented by attorney Stephanie Ferradino.

Closed Public Hearing:

None

Public Hearing:

- 1) 2013-26 Berkshire Mountain Club @ Catamount ski area. Tax Map #157.1-11.100
Special use Permit, for a 3 building resort hotel project.

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

Pat Prendergast Engineer, Harry Freeman from Rock Solid Development and Andrew Howard Esquire came to the table.

~ Prendergast presented a new aerial map of the site with the project outlined.

He pointed out where the cleared areas will be, the overflow gravel parking lot, as well as the location of the water bodies.

~ Hilarie asked about the access to the overflow parking area.

~ Prendergast indicated that a gravel road would allow access to that area.

He showed a map comparing the square foot coverage of the previous project to the present planned development.

The new project is smaller, the areas dedicated to parking have not changed, and the stream will not be relocated.

~ Harry Freeman noted that the previous plan was for a 575 foot long building, the new plan is for a 340 foot long structure.

~ Hilarie informed the audience that this is a public hearing and that questions and comments are welcome.

~ Prendergast noted that some updates were made at the request of the planning Board;

1) Handicapped accessibility, 2) Lighting was revised; Light poles reduced to 21'.5, 3) Extra lights were added to the building to increase visibility.

~ Harry Freeman talked about the productive meeting he had with the fire department. He reassured them of the adequate amount of water available in case of a fire. An analysis was made by Pat Prendergast that indicated that 2million gallons between the two ponds would be available for fire fighting purposes. He indicated that with a flow of 3000 gallons per minute with 1million

gallon at disposal there would be enough water for 6 hours. The amount of water is more than adequate even with multiple hoses and 3 buildings to handle.

Fire officials requested that the intake for the hydrants be raised higher than 2 feet.

Freeman indicated that the issue with access around the building is being worked on with the fire departments.

~ Ed Ferrato asked about water supply for the sprinkler systems.

~ Harry Freeman responded that they will be fed by the 50,000.gallons water tower that will provide water for domestic use as well. He noted that sprinkler systems use very little water.

All the specifications will be part of the building codes analysis.

To obtain the building permits precise calculations by fire safety experts will be submitted as part of the application. A safety buffer has been incorporated and the water supply will exceed the need.

Freeman indicated that the plan calls for 2 dry hydrants in the first pond and an additional hydrant in the second pond.

~ Frank Peteroy asked about the difference between the red and the green hydrants.

~ Freeman responded that he believes that the green hydrants run from the water tower and are not the first choice because the sprinkler system runs on that water. The red hydrants work from the fire water pump and the dry hydrants work off the ponds.

The placement of the hydrants will be worked out with the fire department.

~ Frank Peteroy wanted to go back to the issue of access around the building.

~ Freeman pointed out that the code does not require paved access to the back of the building.

~ Prendergast indicated that a lengthy discussion went on with the developer and Joseph Mc Grath from the New York State Department of Codes Division and that Mc Grath concurred with the developer's architect analysis on the issue.

~ Frank Peteroy disagrees with the interpretation of the code.

~ Freeman said that the fire code indicates that pedestrian access is necessary to carry hoses to the back of the building in case of fire. Fire trucks access is needed within 150 feet of a non-sprinkler equipped building and 300 feet for a building with a sprinkler system. Pedestrian access will be provided in the back of the building.

~ Ken Dow recommended that fire experts should look at the situation and make an educated determination of what is required under the NYS fire code, the subject is highly technical. He also noted that the ZBA in order to grant a special use permit will take in consideration the compliance of the buildings with the fire codes and the recommendations from fire safety experts.

~ Fred Miller from the Hillsdale fire department asked for a clarification about a stream going through the building.

~ Prendergast responded that a stream looking /drainage ditch is planned between building 3A and 3B and there will be a glass and aluminum bridge going over it.

~ Miller also questioned the access to the back once all three buildings are constructed. It appears that there will no longer be any access available at this point.

~ Freeman said that the issues will be worked out and that he has been trying to do just that for the past two months.

~ Miller wants this type of details resolved before anything else happens.

~ Andrew Howard indicated that access for the firefighters will be possible on foot through the buildings.

~ Frank indicated that, with the actual plans the safety of the back units of the building is compromised. The units will be 4 stories high with sprinklers on the terraces but on a slope and the fire department will have a hard time reaching that location.

~ Julie Kane asked why not just build a road behind the building? Is it a financial concern? Is it esthetically unpleasing? Is it ecologically impossible? Or simply the developer does not want to build a road?

~Freeman responded that it would be possible to put a road there but not desirable taken in consideration the type of soil on the slope and the ability to stabilize it.

~ Andrew Howard objected to the discussion and noted that B.M.C. was not there to be crossed examined. A plan was developed to minimize the environmental impact, excavating on the side of the mountain and creating a road that will not be used does not make any sense.

~ Ken Dow indicated that the public comments should be directed to the board, not to the applicants.

~ Ron Pacer commented that there seem to be due diligence from the developer in terms of working out with local fire departments, with the local building agency and the community. It does not appear that the road is an absolute necessity.

~ Jim Brennan from the Hillsdale / Copake fire department commented that the planned buildings are 5 stories high and that the road behind was previously approved by the town of Copake, why then take it away?

~ Lindsey Lebreck noted that there is a lot of support from the community for the project. Jobs will be created. The town will get tax revenues. The project will give the area an opportunity for economical growth.

~ Terence Hannigan from Hannigan Law Firm representing the Hillsdale / Copake fire district commented on different points.

The 120 feet collapse zone for the building has to be taken in consideration by the ZBA for calculations. The buildings being 79 feet high sufficient space has to be made available for the fire trucks.

Access road from route 23 was approved last time, what's going to happen to it now?

Automatic smoke scuttle are not apparent in the new project. The fire chief is adamant that these would be advisable. Smoke kills more people than flames. It allows ventilation through the roof.

~ Hilarie asked if the smoke alarm system will be wire to the fire house.

~ Freeman responded that it is being worked on now.

The fire department also would like to have lock boxes with access to keys for the buildings.

They want to verify that the adequate amount of water will be available at appropriate inlets.

The canapé over the front entrance at 13.6 feet seems to be at a satisfactory height.

The turning radial in the parking lot would have to be about 24 feet for the fire trucks in order to turn.

The last item requested by the fire department is the use of 5/8 double sheet rock in the apartments.

The fire department is interested in the resolution of the issue of access from route 23.

~ Hilarie suggested that the fire department and the developer should meet again to work out all the details.

~ Terri Sullivan a Copake resident asked about the anticipated amount of occupants.

~ Freeman responded that for the 1st building, there will be 66 units, 103 bedrooms. One can estimate two occupants per unit resulting in an approximate amount of 200 occupants.

~ Jeff Nayer, Copake town supervisor, assured the fire department of the town's commitment to facilitate meetings with the developer and would like the town building department code enforcer to be present at these meetings.

~ Andrew Gilchrist attorney for Mr. and Mrs. Alper of the Suisse Hutte presented a blown up copy of page one of the Full Environmental Assessment Form completed by the applicant. He highlighted that the project on the application is presented as a RE-approval of a previously approved resort hotel development and that the approval expired in 2010.

Part of the exhibit included a copy of a plan for road access from route 23 to Catamount Road from Craig Manning Engineering dated April 2003 # 4.1 (that plan was not accepted by the planning board at the time).

An "Access Modification Plan" dated April 2004 # 4.2 prepared by Craig Manning Engineering shows the secondary emergency access road that was required by the town of Copake planning board at the time in order to approve the site plan to minimize adverse environmental impacts. The access road would have been used for truck traffic. It would have mitigated the impact of heavy vehicles on the adjacent lands along Catamount Road during the construction and operational phases of the project. Any of these accommodations are not included in the present proposal.

Nicholson Road is not a viable option as it is not a paved road.

Andrew Gilchrist read a letter from Mr. Alper.

~ Stephanie Ferradino attorney for Linda Breen of Linden Valley Bed & Breakfast presented a letter to the ZBA members and the applicants.

Miss Ferradino commented as follow;

1) Procedural Defects

She argued that the applicant is not presenting a project for a hotel resort but a multi-family condominium residence. The transfer of the units will be conveyed by deeds which is not the case in a hotel. Why does the developer need the attorney general's approval for a hotel project? Pursuant to the town code there is no procedure for "modification of a previously approved special use permit "

The applicant needs to have the property re-zoned or apply for a use variance.

Ferradino found many defects in the application and the documents pertaining to this project.

The SEQRA has not been done; it should have been the first thing on the developer's agenda.

The EAF is incorrect and incomplete.

The applicant is looking to have the SEQRA from 2006 re-approved, but the SEQRA was never filed.

Ferradino stated that the project exceeds the town codes for height and sets back.

The town code reads that when an approval expires the site plan must be resubmitted for review.

The project is different from the previously proposed development.

2) Visual Impact

Ferradino's client Linda Breen will be severely impacted by the project. Her views towards the mountain will be blocked by a 67 foot building. The proposed structure is 5 stories high and inconsistent with the rural community of Copake as well as unsafe. The value of Mrs. Breen's property will be reduced as well as her business income .This project should be relocated elsewhere or reduced in height.

She commented on the landscaping plan, three inch caliper deciduous trees will have no impact in front of a 67 feet tall building. Instead 20 feet evergreen trees would be a more effective way to screen the site.

The lighting plan proposes 22 feet tall light structures with 8 feet spans supporting the fixtures. This type of lighting is appropriate for a Wal-Mart parking lot, not for a residential area in a rural community.

A visual impact assessment should be done under SEQRA.

3) Impact on natural resources

Mrs. Breen had a beautiful pond on her property however the water that feeds the pond has been diverted into a man made pond and the water has been used for snow making purposes by Catamount. Mrs. Breen's pond is now shallow and the trees around it are drying up. If there is not enough water for snow making now, a large residential compound with 66 plus apartments will have a negative impact on the natural water resources.

The waste water treatment location is planned adjacent to Mrs. Breen's property; she does not want to see the plant, smell it and have her own water supply contaminated.

Clear cutting to accommodate the buildings on steep slopes should not be allowed by the town of Copake as it would have a negative carbon impact, it is difficult to stabilize the bare land and it is in conflict with the town's comprehensive plan.

4) Traffic

The intersection is dangerous; an increase of traffic will create stacking issues, there is limited sight distance as well. The emergency access is unsatisfactory. The previous plan with another access road on the south side of the Breen's property is not satisfactory either as it would completely surround the land with three roads and a parking lot.

5) Conformance with the Comprehensive plan

The project is different from the prior planned development.

All the necessary environmental studies should be required by the ZBA. The EAF should be corrected.

The impact of the project would be adversely significant for the abutters and the surrounding community.

The project as it is presented now is not appropriate for this town.

~ Tom Gilbert wants the board to recognize that Catamount Road is a public road and normal traffic should be allowed on it.

~ Andrew Howard responded to Ferradino's comments on the issue of use. The application seeks an approval for use permit as a hotel resort lodge, which is a permitted use in the town of Copake subject to a site plan approval and a special use permit. This is the third time a hotel resort has been proposed at this location. This new project is significantly smaller than the previously approved plans.

The project is located in an R zone and the use for hotel resort condominiums is allowed contingent to obtaining a special use permit from the zoning board of appeals.

With regard to SEQRA the applicant is not treating this as a simple re-approval. Applicant is going through site plan review, special use permit review and SEQRA review for the past five months.

A full environmental impact assessment was done 20 years ago.

With the issue of visual impact, this project is 50 % smaller. Mr. Howard read the planning board findings from 2005 in the supplemental environmental impact with regard to visual impact;" The town of Copake affirmatively found that the project parking lots were located at a significant distance from route 23, the lighting plan was designed to limit "spillage", and based upon the topography the maximum height of the buildings will be 67 Feet and notched into the hillside. In conclusion the board at the time determined that there would be no adverse visual impact."

All the other details concerning waste water treatment, streams and utilization of the ponds are regulated by DEC and the developer is in the process of obtaining all the permits necessary.

With regards to traffic issues, the intersection at Catamount road and route 23 is dangerous and the proposed design will significantly improve the safety.

The proposal to utilize two public roadways will limit the impact on Mrs. Breen's property in comparison to the previous project.

Mr. Howard noted that the reason why the previous project had to create a new access is simply because at the time, Nicholson road was not plowed in the winter. Currently that road is used for emergency by the town of Egremont.

~ Kenneth Wersted from Creighton Manning, Engineers, Planners and Surveyors presented a traffic impact study dated December 2004. He indicated that it is not a true reflection of the actual conditions taking the date in consideration.

~ Hilarie asked if there will be an updated study this one being 10 years old.

At this time there is no plan to do a new study.

Kenneth Wersted indicated that traffic on route 23 was 4100 vehicles a day. More recently it was observed that the count had gone down to 3100 vehicles for the same period of time, a 25% decrease. Traffic counts are done routinely on state roads and this is the data that was used in this case. Under these conditions it was determined that a new study was not necessary.

Wersted stated that in case of an emergency Catamount Road will be the main access.

~ Hilarie asked if Nicholson road was paved, the answer is no.

Strom asked if the developer is planning on having construction trucks utilize Nicholson road.

~ Andrew Howard responded that it was agreed that during construction there will be a bond to guaranty the repairs of the town road (Catamount Rd.) It is also the intention of the developer to recoat the road when necessary. Nicholson Road will not be used for heavy equipment.

~ Kenneth Wersted went on further explaining the details of the traffic study, worst case scenarios were examined. The design plan of the future road will allow safe entering and exiting the area. The roadway will still have some rise.

~ Frank Peteroy asked why the center line of Catamount road was moved North, 195 feet closer to the Massachusetts's border.

Kenneth Wersted explained that it was moved to decrease the angle of the road.

Frank Peteroy does not agree with the design and noted that it was not an improvement, sight distance will still be a problem. The plan is not much improvement from the existing road.

~ Howard objected that experts were consulted, DOT guide lines respected and the design is the best possible for that location. However the issue will be discussed again with Creighton Manning.

~ Gilchrist stated that he was chocked that the developer will not consider trying to mitigate the impact on the Suisse Hutte. The developer's last word is that there is no plan to divert any construction vehicles away from Catamount road. He admits that Catamount road is a public road but the prospect of having large construction equipments and delivery of materials for the next 5 years right under the Suisse Hutte's windows in untenable. The developer clearly does not want to honor the prior agreement. To mitigate the impact on Mr. Gilchrist's clients; the Alpers, Nicholson road should exclusively be used for construction equipment as it is presented as a perfectly suitable secondary access road.

He noted that the developer had made no attempt to deal with Mrs. Breen until two weeks ago showing disregard for the abutters.

~ Andrew Howard responded that Catamount road is suitable, it is a public road and the developer will maintain it and improve it. The Suisse Hutte and Linda Breen both will benefit from the improved road.

~ Frank Peteroy had comments;

1) Frank has made his own research, he handed out a printout from the NFPA dated 2010 in ref. to fire department operations in properties protected by sprinklers and standpipe systems. Frank noted that Mr. Freeman had mentioned training of the fire department; it appears that training is part of the recommended practice from NFPA.

2) Frank consulted the Massachusetts DOT records for his research on traffic count. He found out that for 2012, the daily traffic count at the Mass and NY border was 3189 vehicles.

3) With regards to the entrance at Catamount road; sight and stopping distances should be reexamined as the new plan does not ameliorate the existing conditions.

4) Massachusetts DOT functional classification for Nicholson road is; "A local road providing access to land with no emphasis on mobility." It is a non improved local road not viable as a secondary option for emergency access.

~ Prendergast noted that Egremont uses that road for emergencies at the ski area.

~ Frank stated that Nicholson road is washed out in some areas. He indicated that Catamount road should have 3 lanes to comfortably accommodate large emergency vehicles.

~ Andrew Howard commented that all the results for the traffic counts from NY and Mass. are showing a decrease.

~ Frank recapped that the project is for 153 units and 256 bedrooms. He would like to see floor plans and elevation clearly indicated at the next public hearing

~ Freeman talked about the town of Copake basing the number of parking spaces on the number of bedrooms instead of the number of units has it is usually customary .

Hilarie asked if there were more questions or comments from the audience, being none; *Hilarie asked for a motion to adjourn the public hearing and continue April 24. Frank made the motion, Jon Strom seconded, all in favor.*

New Applications:

None.

Meeting was adjourned at 9:45

Next meeting; Thursday April 24, 2014

Respectfully submitted.
Recording Secretary.
Veronique Fabio