

# Town of Copake Zoning Board of Appeals

~

## Meeting Minutes of April 24, 2014

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on April 24, 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 7:15 PM.

### Roll call:

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

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 March 27, 2014 minutes and approve them, Jon Strom made the motion, Michael DiPeri seconded, all in favor.*

### Correspondence:

Hilarie Thomas noted that the correspondence pertaining to Berkshire Mountain Club and it will be reviewed during the public hearing.

<p><b>Please note that all referenced attachments comprising 21 pages as well as a 46 pages packet, 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.</b></p>
---

April 1 : Memo from Building Department in ref. to Berkshire Mountain Club.

April 3 : From A. Gilchrist attorney for Alper; pictures of Nicholson Road.

April 4 : Email in ref. to a site visit at Catamount.

April 5 : Article on visual impact test performed in Ghent / Claverack.

**Closed Public Hearing:**

None

**New Applications:**

For the convenience of the 3 new applicants, tonight the ZBA will review the new applications prior to the public hearing for Berkshire Mountain Club.

1) 2014-02 Podrid, 16 Brown Rd. Taconic Shores. Tax Map 176.3-2-7 . Area variance for attached screened porch.

David Podrid representing his parents Anita and Philip Podrid came to the table and described the project. His parents want to add a 12 feet by 20 feet one story screened in porch to the side of their house in order to enjoy the outdoors without bugs during the summer. The lot is a double lot.

Jon Strom noted that on the photos provided a concrete slab could be seen.

Mr. David Podrid responded that his parents were unaware of the need for a permit to build a screen porch, found out and are now presenting an application to the ZBA to obtain a variance.

It was recommended to the applicant that Taconic Shores homeowner's association had to be contacted. The ZBA will forward the documents to Taconic Shores.

Frank noted a discrepancy between the plan provided by the owner and the drawing from the contractor (12' x 20' versus 12' x 24'). The size of the porch will have to be corrected.

Jon Strom noted that the measurements from the porch to the property line should be specified as well.

*Hilarie Thomas asked for a motion to accept the application for a public hearing on May 22, Michael DiPeri made the motion, Jon Strom seconded, all in favor.*

2) 2014-03 Kaplan, 69 Golf Course Rd. Tax Map 165.-1-95 . Area variance for 8x10 toolshed.

Mrs. Andrea Kaplan came to the table to present her project; storage shed located 11 feet from the edge of Copake Lake and 14 feet from the side yard property line.

Frank asked if she had contacted the DEC.

Mrs. Kaplan was unaware of the need to contact DEC.

Jon Strom questioned the choice of location for the shed, close to the water instead of by the golf course.

Mrs. Kaplan responded that she intended to store items used in the water, justifying the proximity to the lake. She went on to explain that shrubs and trees had been planted screening the shed from view. She indicated that she counted 13 sheds on adjacent

properties in her neighborhood that were installed on the property lines and close to water as well.

Hilarie clarified the need for a variance for any development within 100 feet of a water body and the need to contact the DEC even if Copake Lake is not under their jurisdiction. Mrs. Kaplan indicated that might not be able to attend the May 22 public hearing, Hilarie reassured her that she did not need to be present.

*Hilarie Thomas asked for a motion to accept the application for a public hearing on May 22, Michael DiPeri made the motion, Jon Strom seconded, all in favor.*

3) 2014-04 Harrington, 2210 County Route 7. Tax Map # 186.-2-44 . Area variance for a 6 foot stockade fence.

Mr. Harrington came to the table to present his project. He wants to install 170 feet of 6 feet high stockade fence on the property line facing Route 7, from the Northeast corner extending West 157 feet along the Northern boundary line and 13 feet South. The proposed fence will not extend in front of the house. Mr. Harrington explained that he has two young children and a fence would give privacy from the camp ground on the opposite side of the road and the traffic on route 7 as well as a safe area for his toddlers to play. The proposed fence is consistent with other privacy fences in the neighborhood and on route 7.

Jon Strom asked if the fence will be painted or left natural.

Mr. Harrington said he will use pressure treated fencing material.

*Hilarie Thomas asked for a motion to accept the application for a public hearing on May 22, Michael DiPeri made the motion, Jon Strom seconded, all in favor.*

### **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.  
Pat Prendergast Engineer, Harry Freeman from Rock Solid Development and Andrew Howard Attorney were present. Richard Edwards was also in the audience.

*Hilarie Thomas noted this was a continuation of the public hearing opened January 2014.*

Ken Dow wanted to address the issue of the project description as a Resort Hotel. He pointed the article 232-28 B of the Copake Zoning Code that indicates that *“The Zoning Board of Appeal shall have the responsibility for determining area variances, use variances, special use permits and such other matters as may properly come before the Board.”*

Ken Dow went on citing article 232-28 C

***“The Zoning Board of Appeals shall have original jurisdiction for the consideration of special use permits and use variances. The need for an area variance shall be determined by the Building Department.”***

It has to be an implied power there, it has to be determined if the application fits the description. He gave an example of an application filed for a convenience store. It is implied that the use will be to sell snacks and drinks and basic necessities etc.... The board will act and make a determination to grant or not a special use permit bases on the description. The description has to fall under a defined term in the code. The ZBA has the authority to determine if the project described fits the future use. Before the ZBA goes any further with the Berkshires Mountain Club application it has to determine if the description of the project matches the future intended use.

He also cited article 232-3 B,

***“Resort Hotel, Resort Ranch or Resort Lodge-  
An area of land on which is located a hotel or group of buildings containing living and sleeping accommodations hired out for compensation, which has a public lobby serving guests and contains one or more dining rooms and recreation facilities.”***

Similar projects were presented to the ZBA in the past years and were granted special use permits. If the relevant facts are the same, the conclusion by the ZBA should be similar to the precedent. If the board determines that the use will be different a judgment should be made following the zoning code. The determination should not be based on size or design but on the fundamental facts that the project is a Resort Hotel as defined in the Copake Zoning code. These issues were brought to the floor by the attorneys representing the abutters.

The ZBA should make their determination as soon as possible.

~ Andrew Howard wanted to highlight some points.

- 1) The project contains sleeping and living accommodations hired out for compensation. The rental program will offer units that are under the fractional time shares when not in use by shareholders. The public will be able to rent units.
- 2) All the traditional resorts amenities will be offered; concierge, front desk, locker rooms, spa, pool, room service, valet service, and restaurants facilities.

Andrew Howard handed out a document dated April 24, 2014 describing in details the nature of the project. He indicated that the project clearly matches the Resort Hotel description in the Copake Code.

~ Ken Dow made reference to some documents from the previous application (Neopolis).

~ Stephanie Ferradino argued that the Berkshires Mountain Club project intended use is first a condominium type of building with the option to rent the unused units.

The Neopolis project was first a hotel with the option to offer some units for fractional ownership.

~ Hilarie remarked that it appears that there is no consensus between the use presented in the application and the advertising in local papers. No-where in the promotional pamphlets were the words “Hotel Resort” mentioned. It appears that it is fractional ownership with hotel amenities.

~ Mr. Freeman noted that the board was confusing the words used for the application and the wording necessary for the advertising to the general public. The financing of the project is subject to a certain number of units in contract. The term resort hotel does not mean anything among the general public. The owners of the fractional units are not required to rent their units when absent. The rental program is optional, but the business model is based upon a number of units available for rent. The use of different terms in different publications is a marketing decision.

~ Andrew Howard pointed that under the 2003 ZBA resolution it is stated that “the project may be owned and operated under a time share and condominium format.”

~ Hilarie indicated that the board in reviewing the resolution from 2003 could find that it was made in error.

~ Ken Dow mentioned from the 2005 resolution that “The intended construction of phase one will make the project self sustainable, an offering plan will eventually be filed with the New York State attorney general’s office. The project is intended to constitute a top rate resort hotel. Ownership will be in the form of condominiums, intended to be vacation properties.”

~ Jon Strom read from the Copake Code under description of Hotel “A building, or any part thereof, which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and which may or may not contain one or more dining rooms.”

Under Resort Hotel, Resort Ranch or Resort Lodge, the description is as follows “An area of land on which is located a hotel or a group of buildings containing living and sleeping accommodations hired out for compensation, which has a

public lobby serving guests and contains one or more dining rooms and recreation facilities.”

Jon noted that the word “transient” is not present in the Resort Hotel description suggesting leeway for other types of ownership and broader use.

~ Stephanie Ferradino passed around a promotional pamphlet from Berkshire Mountain Club where she had highlighted some words. She commented that the word Hotel is only used to describe “A residence with amenities, services and benefits of a four star hotel.”

She also noted that if condominiums are allowed in Copake why not file an application for that?

~ Howard responded that the project was presented as a resort hotel and there is no difference between this project and the Neopolis.

Jon Strom questioned how much weight should the ZBA give to the marketing promotion and how relevant is it to the ZBA?

~ Bill Wood from the Egremont zoning board asked who will be the owner of the 9.9 acres parcel in Copake.

~ Freeman responded that it will be Berkshire Mountain Club LLC, Catamount will be partner.

~ Hilarie clarified for Mr. Wood that this application is before the ZBA for a Special use permit.

~ Ed Ferrato noted that condominiums are not an allowed use in any zone of Copake.

~ Ken Dow pointed out that condominium is a form of ownership not a form of use.

~ Andrew Gilchrist representing the owners of the Suisse Hutte noted that he disagreed with Ken Dow earlier statement regarding the implied authority of the ZBA.

Gilchrist read part of New York town Law 267-a (4). The primary jurisdiction for zoning interpretations in NY State lies with the building inspector. If there is a disagreement an appeal can be made to the ZBA. This board has appellate jurisdiction and is the ultimate interpreter of the provisions of a zoning law.

~ Andrew Howard noted that Berkshire Mountain Club has to go before the Planning Board, the Planning Board defers to the ZBA, a decision by the ZBA is necessary for a resolution on this matter. He went on pointing out that a special use

permit for Resort Hotel will be the same regardless the type of ownership; one entity or multiple owners in the case of condominium type of ownership. The applicant has been dealing with the town since October and the applicant needs to have a decision on this particular item to be able to move forward. There is no difference from what was previously presented to the board by Neopolis.

~ Hilarie Thomas stated that the board is not ready to make a decision tonight; four new letters have been received this evening. The board wants to defer the decision on the Resort Hotel / Condominium issue to next month.

~ Frank Peteroy mentioned that last month the board had asked for floor plans and elevation. The board received the floor plans but still no elevation plans. There is a discrepancy in the height of the buildings, different numbers have been given.

~ Freeman responded that the B.M.C. will be within the Copake zoning of 67 feet high variance. There is not a final plan yet for height. Schematic will be provided for the next meeting.

~ Frank reminded Freeman that the height of the building is a great concern of the fire department.

Review of the Environmental Assessment Form.

Ken Dow read through Part 2 of the form to flag items that might create an issue.

This is a review coordinated with the Planning Board.

Members and applicant discussed the different points.

Impact on Land and Geological Features;

A discussion arose concerning water table height, water disturbance and waste water treatment.

~ Predegast indicated that 6 wells were dug; only 4 will be used, water levels were tested and there was no change in the level of the remaining wells, 30 gallons a minutes is the average output for the wells.

~ Andrew Howard noted that all these water issues, impact on ground water and waste water treatment have been extensively reviewed by the Planning Board, the DEC and the town of Copake engineer. All permits were obtained and all water issues were already addressed.

Ken Dow went on to Impact on Plants and Animals as well as agricultural resources.

~ Hilarie mentioned that there were concerns from some abutters about trout in the streams.

~ Prendegast noted that there were no endangered species on the propose construction site as per the DEC.

Ken Dow went on;

Impact on Aesthetic Resources will have to be examined further. There is a sharp contrast on land use between what is existing and the proposed project.

Hilarie questioned why the scenic overlay restrictions do not apply in this case.

Impact on Transportation did raise a lot of issues during the preceding meetings.

Documentations have been provided by the applicant concerning the traffic impact.

Impact on Energy; Freeman stated that there is sufficient power provided for the project.

Impact on Noise, Odor and Light; There will be some blasting going on, odors will possibly emanate from the waste water treatment.

~ Prendergast indicated that there will not be on site sewage treatment, the solid waste will be carted out periodically, every two or threes weeks.

Light will affect the neighbors, it is a significant issue and it should be looked at.

Other Impacts; The construction of this project will span over 4 to 5 years, the noise, odor and light impact is not negligible and will have to be dealt with.

Impact on Human Health;

Consistency with Community Plans: This project is not consistent with local plans and zoning regulations. A growth of more than 5% in population is possible. The project will support its own infrastructure.

Consistency with Community Character;

A potential for increase in demand for community services exists.

The project is much larger than anything in existence in the community.

Ken Dow asked the audience if they had any questions and comments.

~ Bill Wood asked about the impact of dust and noise on the patio of the Suisse Hutte Restaurant, will there be some type of compensation for the loss of business? The restaurant will be impacted for the next five years or more.

There is an application presented to the town of Egremont to move a maintenance building. What if there were spills of some sort on the ground?

~ Freeman noted that the property, within the last 24 Months, was checked out for the purpose of refinancing and was given a clean bill of health.

Andrew Gilchrist Esq. and Stephanie Ferradino Esq. handed letters to the ZBA.

~ Laura Griffin from the town of Hillsdale asked about the next step for the ZBA towards the approval of the application. She noted that people are very interested about the project and businesses want to prepare themselves and plan ahead.

Hilarie responded that she anticipated that the ZBA will make a decision next month. Ken Dow explained that another board is involved; an environmental review is being worked on still.

~ Andrew Gilchrist took the stand, he represents the Suisse Hutte; a business that will be significantly impacted by the construction and is looking at risks of job loss. Twenty five people are now employed at the Suisse Hutte and face losing their income. If there is just a potential for an adverse impact, discussions should not go on and a supplemental E.I.S. has to be done.

~ Lindsey LeBreck commented that local people are excited about the project. There are so few opportunities for economic development in the area. This project will increase business. Imagine if Catamount did not exist?

~ Mr. Alper read a letter he wrote.

*Hilarie asked for a motion to adjourn the public hearing and continue May 22. Frank Peteroy made the motion, Jon Strom seconded, all in favor.*

**Meeting was adjourned at 10:15**

**Next meeting; Thursday May 22, 2014**

**Respectfully submitted.  
Recording Secretary.  
Veronique Fabio**

