

**Town of Copake
Zoning Board of Appeals**

Minutes April 25, 2013

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on Thursday, April 25, 2013, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of about 10 was present including Marcia Becker; Planning Board , Susan Sweeney; Town Board Liaison and Edward Ferrato Building Inspector.

The meeting was called to order by Chairman Hilarie Thomas at 7:10 PM.

Roll call: Present at this meeting were: Hilarie Thomas, Frank E. Peteroy, Michael DiPeri, Ralph Shadic, Jon Strom was absent.

Kenneth Dow; Copake Town Attorney was also present.

Minutes:

Hilarie asked for a motion to waive the reading of the March 28 minutes and approve them. Frank Peteroy made the motion, Michael DiPeri seconded, all in favor.

It was noted that The October 2012 minutes were still open but the draft was approved at the last meeting.

Correspondence:

Hilarie Thomas reviewed the following correspondence.

March 27----- from W. Gregory High Way department in ref to Hosier

April 4-----from DEC ref to Chibbaro application .

April 5-----from Planning Board in ref to “Sewage disposal and location design and construction materials of such facilities.”

April 6-----from Planning Board in ref to application 2013-05 Dupilka.

April 10-----from Planning Board in ref to Hosier

Closed Public Hearing:

None

Public Hearing:

1 2013-05 Dupilka, 54 Cat Track Rd. Copake, 186-1-80. Area variance requested for deck with a left side yard variance of 12’ needed.

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

Hilarie read the Memo from the Planning Board.

“The site plan approval will be subject to the variance granted by the Zoning Board of Appeals. A 12 foot side yard variance is requested.”

Hilarie 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, Frank Peteroy seconded, all in favor.

The ZBA will be voting on a 12 feet side yard variance tonight.
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.*

Roll call vote; Ralph Shadic, Yes. Frank E. Peteroy, YES. Hilarie Thomas, YES.
Michael DiPeri, YES.
Variance granted.

2 2013-06 Polayes/ Tiger, 82 & 86 S.W. Colony Rd. Tax Map # 165.14-2-2 Area variances for front, rear, left, right set backs as well as a height variance on undersized lot, work to be done within 100' of a body of water.

Marc Bailey of Dennis "Wedlick Architects" came to the table, he represents the owners of the property.

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

Marc Bailey noted that the decks square footage was reduced from 600 square feet to 300sq. ft.

Planning Board had concerns with the sand filter system for the septic; Marc Bailey explained that there was a lining that prevented any effluents to pass through.

Location of the septic system is now drawn on the plans.

Notification to DEC was initiated, a letter has been sent to Mr. Higgins, and no answer has yet been received.

Hilarie noted that if the board grants the variances tonight they would be subject to the approvals of the DEC.

Marc Bailey explained in detail the sand filtering septic system.

He noted that he has a meeting with the Planning Board scheduled for May 3rd.

Hilarie asked if anyone in the audience had comments or questions being none;

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

Hilarie proceeded to read the 267-b Permitted action by board of appeals.

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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; the project will be a major improvement to the neighborhood

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; the square footage will be reduced.

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.

NO.

The board is voting tonight on seven (7) variances;

- 1) A front yard area variance to the residence of 38'-11"
- 2) A left side yard variance to the residence of 18'-4"
- 3) A right side yard variance for the retaining walls to be determined, said walls should not be higher than 6 feet.
- 4) A rear yard variance to the property line for the house of 23'-7"
- 5) A variance of 48'-7" for the house to the lake.
- 6) A height variance of 7'.
- 7) A set back variance of 58' for the septic tank.

Roll call vote; Ralph Shadic, Yes. Frank E. Peteroy, YES. Hilarie Thomas, YES. Michael DiPeri, YES.

Variance granted. Condition to DEC approval.

3 2013-07 Gregg Hosier, Lakeview Rd, Tax Map # 165.11-1-45 ,area Variance, improvements within 100' of water (deck and vehicle pull off..)

Mr. Hosier came to the table accompanied by his attorney; Ira Halfond .

Hilarie explained that the public hearing will not be closed tonight, because 2 out of the 3 abutters did not get the public hearing notice due to wrong addresses given.

New notifications will have to go out.

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

Hilarie read the letters from DEC dated April 23rd.

From US Army Corps of engineers dated April 18th.

She noted that the Panning Board has not yet reviewed Mr. Hosier's application; the board was waiting for the new plans.

Hilarie asked how high will the deck be.

Mr. Hosier responded 7 to 8 feet above the ground.

Ed Ferrato; Building Inspector came to look at the new plans. He noted that someone could almost walk under the deck.

Hilarie express that she would like to see the deck further back, Mr. Hosier explained that because of the grade, the slope being so steep the deck was as far as it could be.

She asked what provisions had been made to handle storm water, and erosion prevention.

Ed Ferrato asked for details on the retaining walls around the parking area.

Mr. Hosier explained that there will be prefab 2x2x6 concrete set on the ground around the parking. The blocks once set, cannot move, they interlock they are about 3,500 lb. each. The area will have to be leveled before installation.

Hilarie is concerned with the stability of the whole parking area, she would like to see an engineer plan for the structural soundness of the project.

Ralph Shadic noted that the concrete blocks were not visually appealing.

Frank agreed that a structural engineer should take a look at it. A step footing should be established 4 feet below grade or the whole structured could move.

Ken Dow pointed out that the ZBA is looking out for the health and safety of people and property and impact on the environment.

Frank asked about the piers for the deck.

Mr. Hosier said they will be drilled and set in.

The public hearing remains open; Mr. Hosier will come back on May 23rd.

Hilarie Thomas asked for a motion to keep the public hearing open until next meeting May 23rd., Michael DiPeri made the motion, Frank Peteroy seconded, all in favor.

Could not make it to the meeting;

Application # 2013-04 Mr. Anthony Chibbaro , 395 Lakeview Rd, Copake Lake ,165.7-2-6 .

6. New Business:
New Application:

**1) 2013-08 Ivan & Diane Taub , 1052 Lakeview Rd Taconic Shores
Tax Map # 176.1-2-55, Are variance requested for 20 x20 garage in front yard of
property.**

Hilarie read the building Inspector's recommendations for the variance needed.

Mr. Taub needs relief from section 232-8D (4), locating an accessory building in the front yard.

Mr. Taub explained that the garage was already built; he had filed out an application with the Taconic Shores Home Owners Association and thought that his contractor was getting the building permit, he did not.

The application is complete. Frank asked where the septic field was located.

It appears that may be the garage is on top of the field.

It was recommended that Mr. Taub finds out the exact location of the field.

Hilarie suggested that the field could be going towards the adjacent property or even towards the lake considering when the house was built.

Frank suggested some vegetal screening to hide the garage from the road.

The application will be referred to the Planning Board.

Hilarie Thomas asked for a motion to Schedule this application for public hearing for May 23rd., Michael DiPeri made the motion, Frank Peteroy seconded, all in favor.

**2) 2013-09 DiSalvo Carmella , 23 Longley Dr. Copake . Tax Map # 165.10-1-8.
Variance requested for 12 x 18 deck for a hot tub.**

Maria DiSalvo came to the table to present the project, she represents her mother Carmella.

The purpose of the new deck is to accommodate a hot tub, the new deck will not be attached to the old one, a set of stairs will lead to the deck.

An application to the DEC will be filed by the applicant.

Mrs. DiSalvo updated the abutter's list.

The application will be referred to the planning board.

Hilarie Thomas asked for a motion to Schedule this application for public hearing for May 23rd. Michael DiPeri made the motion, Frank Peteroy seconded, all in favor.

3) 2013-10 Kreutz Juan, 137 Golf Course Rd. , Tax Map # 165.5-1-7, area variance for 10x5 deck near the water line of Copake lake.

Mr. Kreutz needs a variance to develop within 100 feet of a body of water.

Mr. Kreutz filed an application with the US Army Corps of Engineers.

Letter from them dated April 10, 2013 states that no permit is necessary and that care should be taken so that any fill or other construction materials, and debris, do not enter the water.

Mr. Kreutz noted that there are now large boulders near the edge of the lake that become very slippery when wet, he has 3 children and the rocks make it difficult for the children to access the water. The footings of the deck will be on shore, not in the water.

Hilarie suggested that the boulders could be removed to alleviate the problem.

Mr. Kreutz responded that he water there is very wavy and the boulders protect the shore against erosion. The new deck would be over the rocks.

Frank noted that the size proposed is 10'x 5'.

Mr. Kreutz would like footing in the ground rather than another system. There will be removal stairs as well. The deck will be low to the ground, 7" or so.

Hilarie suggested a sketch of the project with details about the type of footings and erosion control.

The application will be referred to the planning board.

Hilarie Thomas asked for a motion to Schedule this application for public hearing for May 23rd. Michael DiPeri made the motion, Frank Peteroy seconded, all in favor.

4) 2013-11 Sawchuk, 139 Lake Shore Drive , tax map 176.3-3-7,

Property owners want to replace existing home with a new construction within the existing footprint and add a 2nd floor.

An are Variance is needed for relief from density Control Schedule; 232 attachment 3, note # 3.

Frank Peteroy Architect represents the owner of the property.

Mr. Sawchuck is also present.

Hilarie asked about the lot coverage. Frank responded that there will be a new survey done because of a discrepancy in the square footage numbers.

The house will be removed as well as the foundation, and replaced by a new construction, with 3 bedrooms, one downstairs and 2 upstairs.

Existing stone walls will remain. The new house will follow the same footprint.

There is an existing cellar with a below grade garage.

The present house is 97 feet from the road and 44 feet from the rear wall to the shore line.

The plans indicate an open space downstairs for storage, a kitchen, living room / dining room and a bedroom on the 1st floor. The present roof of the garage is used has a deck.

A new entry, a new staircase leading to the 2nd floor with 2 bedrooms.

The project will make the house handicap accessible.

The owner will update the septic system if necessary.

DEC will be contacted.

On the site plan are indicated the water protection hay bails.

Two trees will have to be taken down. They are dead and should be removed before work starts.

Ralph asked for confirmation that the new house will not be closer to the water than it is now. Frank confirmed and said the house will be higher but on the same footprint.

An application was submitted to Taconic Shores Home Owners Association.

Hillarie asked if the ZBA can get a letter from them.

Frank noted that the original foundation creates allergic reaction in a child in the family.

The application will be referred to the planning board.

Hilarie Thomas asked for a motion to Schedule this application for public hearing for May 23rd. Michael DiPeri made the motion, Frank Peteroy seconded, all in favor.

5) 2013-12 Nielsen, 25 SW Colony, tax map 165.14-02-67.12, area variance to build a 15 x 15 deck within 100 feet of Copake lake, a set of 5 stone steps and a set of wooden stairs leading to the lake shore.

Christopher Mc Donald of Whiteman, Osterman & Hanna law firm represents Mrs. Nielsen.

He states that” this is a new application and he views the application as three different projects

(1) The stairs existing (5 steps) of off the existing patio,

(2) The 15 x 15 patio, and

(3) A wooden set of stairs going to the lake. The plan is to use metallic post for minimum soil disturbance.

The project is consistent with the character of the neighborhood.

Each of these components meets the standards. No detriment to anyone will result with these improvements designed for minimal impact. Views from the road are not altered in anyway.”

Hilarie briefly went through the history on this application. She noted that the previously approved plan had steps were supposed to be recessed.

The applicant is asking for the exact same thing that was denied previously.

Mc Donald pointed out that he had read the ZBA denial letter and took notice that the bad faith of the applicant was taken in consideration by the board. The 2nd patio has been removed it is now a fresh start.

He noted that “res judicata” does not apply when there is a change of circumstances.

Hilarie mentioned that an applicant cannot keep on coming back just because you don’t like the decision of the board and the applicant did not remove all the constructions erected without permits in this case the stairs remain.

The application will be referred to the planning board.

Hilarie Thomas asked for a motion to Schedule this application for public hearing for May 23rd. Michael DiPeri made the motion, Frank Peteroy seconded, all in favor.

Jeff Nayer; Town Supervisor accompanied by Susan Sweeney addressed the ZBA members.

He reminded board members that they have to remain civil and considerate when dealing with the applicants. He also mentioned the four hour mandatory training.

At 9.10 the board went into executive session to interview Mr. Adam Resnikoff who is applying for the vacant position on the ZBA.

At 9.25 the board came out of executive session.

Hilarie Thomas asked for a motion to adjourn this meeting. Michael DiPeri made the motion, Frank Peteroy seconded, all in favor.

Meeting was adjourned at 9:30.

Respectfully submitted.

Veronique Fabio

Recording Secretary.