

Town of Copake Zoning Board of Appeals

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Meeting Minutes of May 22, 2014

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on May 22, 2014, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of about 45 was present as well as, Jef Nayer : Town Supervisor, Bob Haight: 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 April 24, 2014 minutes and approve them, Frank peteroy made the motion, Michael DiPeri seconded, all in favor.

Correspondence:

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

Closed Public Hearing:

None

Public Hearing:

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

Mr. and Mrs. Podrid came to the table.

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

It was noted that all the abutters were contacted except for one. The town hall does not have any other address on file to contact Roland and Charlotte Carito.

Hilarie read the Building Department referral memo dated April 12, 2014.

“The property is located in R2 district. The applicant needs relief from 232-24 B (a) 2. As well as relief from 232-24 B (a) 5 A rear yard area variance of 27’ and a front yard variance of 12’ are also needed.”

Hilarie also read the memo from the Planning Board;

“At the Mai 1st Planning Board meeting , the members conditionally approved the site plan for the Podrid addition of a screened porch to an existing residence subject to the addition of the owner’s name and address to the site plan, and to the granting of the area variance by the ZBA.”

Mrs. Podrid indicated that the size of the porch has been corrected; it will be 12’ x 20’. She also said that Taconic Shores Home Owners Association had requested an architect drawing of the project. The Podrids will provide the document to the T.S.H.O.A. The approval from the ZBA will be conditional to the submission of the documents requested by Taconic Shores.

Hilarie asked if anyone had comments or questions; being none;

Hilarie Thomas asked for a motion to close the public hearing. Michael Diperi made the motion, Jon Strom 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: 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.

The board tonight will vote on;

- 1) A front yard set back variance of twelve feet (12’).
- 2) A rear yard set back variance of twenty seven feet (27’).

For the purpose of building a 12 X 20 one story screened porch attached to existing home on the north side of said residence.

The Podrid will provide the drawings to the planning board, the building department and the ZBA.

Roll call vote:

Ralph Shadic, YES. Frank E. Peteroy, YES. Hilarie Thomas, YES.
Michael Diperi, YES. Jon Strom, YES.

Variance granted for the purpose of building a 12 X 20 one story screened porch.

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

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

Relief from 232-9P (1) development within 100 feet of a body of water as well as a variance for installing storage shed is needed for this application.

The DEC letter that had been requested was received by the ZBA.

The memo from the Planning Board was acknowledged;

May 7, 2014 .Memo to: Hilarie Thomas, Chair, ZBA. From: Chris Grant, Vice Chair, Planning Board

Re: Kaplan application to construct and install a shed on within 100' of Copake Lake

Project location: Golf Course Road, Copake Lake

At the May 1, 2014 Planning Board meeting the members reviewed the proposed eight foot (8') by ten foot (10') shed Mark E. Kaplan wishes to build on the shore of his property on Golf Course Road at Copake Lake. The members discussed the fact that the structure will be twelve feet (12') from the side and eleven feet (11') from the lake. It is the Boards understanding that the shed will be anchored to the ground with screw-in type anchors to prevent anything from blowing away.

The Board also noted that the variance will be within one-hundred feet (100') of a water body which might require a disturbance of banks permit because this is within fifty feet (50') of a water body. A letter should be written to the DEC regarding this.

Chris Grant. Vice Chair

Hilarie asked if anyone had comments or questions being none;

Hilarie Thomas asked for a motion to close the public hearing. Michael Diperi made the motion, Jon Strom 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

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: 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.

The board tonight will vote on;

Relief from 232-9P(1) for the purpose of installing an 8 X 10 storage shed within a 100 feet of a body of water.

A rear area variance of 64'

A side yard variance of 18'

Roll call vote;

Ralph Shadic, YES. Frank E. Peteroy, YES. Hilarie Thomas, YES.

Michael Diperi, YES. Jon Strom, YES.

Variance granted

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.

All the abutters were contacted.

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

Hilarie read the memos from the building department and the planning board.

DATE: April 8, 2014 Zoning Board of Appeals .RE: Mr. Jonathan & Bevin Harrington

District – R-2 Setbacks- Front yard-40', Side Yard-30', rear yard-75'

Dear Board Members:

The Applicant needs an area variance for Article V Section 232-9-F

The applicant intends to install a fence in the required front yard taller than four (4').

Very Truly Yours, Town of Copake , Building and Code Enforcement Officer.

May 7, 2014

Memo to: Hilarie Thomas, Chair, ZBA
From: Marcia Becker
Re: Referral letter for Harrington variance request to locate 6 foot high stockage fence in the front yard

Project location: County Rt 7A West Copake

Dear Hilarie,

At the May 1 Planning Board meeting the members reviewed the proposed 6 foot fence project application submitted by Jonathan and Bevin Harrinton. The members questioned the proposed fence set-back distance from the highway which is not clear from the site map. They property owners should be made aware that the County Highway easement is 25 feet from the center on the highway and all development should be beyond that easement. The other matters to be considered are the location of the residence which is in the B-R Zoning District, and that the sight lines along the highway should not be obscured.

Sincerely,



Marcia Becker

Frank reminded the applicant of the 25 feet from center of roadway as per county highway easement. He also asked that the fence should be installed within the property line. There are no problems with sight; the road is straight at this point. Hilarie asked if there will be a gate, Mr. Harrington responded yes.

Hilarie asked if anyone had comments or questions; Being none;

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

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

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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: 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.

The board tonight will vote on;

Relief from article V section 232-9-F for installation of a 6 feet tall stockade fence.

Roll call vote;

Ralph Shadic, YES. Frank E. Peteroy, YES. Hilarie Thomas, YES.

Michael Diperi, YES. Jon Strom, YES.

Variance granted

New Applications:

1) 2014-05 Maggiacomo, Arrohead Acres Cherokee Drive Tax Map # 165.10-1-31.

Area Variance for 20 x 20 deck near water and repair retaining wall.
Work within 100 feet of water body.

Mr. Maggiacomo came to the table.

Hilarie read the building department referral letter.

DATE: May10, 2014 Zoning Board of Appeals

RE: Mr. John Maggiacomo/AAcres .

*Cherokee Dr. Copake, NY
District – R-2
Front Yard- 40’, Side Yard- 30’, Rear Yard- 75’*

Dear Board Members:

*The Applicant needs an area variance for relief of Section 232-9 P- (1)
Development closer than 100’ of a body of water. Installation of a retaining wall
and a deck.*

Also: A side yard variance for the deck of 30’

*Very Truly Yours,
Town of Copake
Building and Code Enforcement Officer*

Jon Strom asked the applicant what was Arrowhead Acres. Mr. Maggiacomo explained that it is a development of off Cove Road near Copake Lake.

Jon asked where the owners parked; Mr. Maggiacomo explained that he uses a golf cart to drive to the lot.

The project consists of rebuilding a retaining wall, and building a 20x20 deck.

The 45 feet long retaining wall will not touch the water.

Applicant contacted the DEC and the project was approved. The ZBA will need the approval letter.

Frank asked how far the lake is from the retaining wall is. Applicant indicated that the existing wall is and 9 feet from the edge of the lake, the new wall will be at the same distance. The drainage pipe in the wall will be located higher than the water.

Hilarie asked that the applicant provide a clear drawing of the project indicating the distance from the propose retaining wall to the lake as well as the location of the drainage pipe. She explained the application process including the referral to the planning board.

Hilarie Thomas asked for a motion to accept the application for a public hearing on June 26, Michael DiPeri made the motion, Jon Strom seconded, all in favor.

2) 2014-06 Farmland Renewal LLC. 122 acres in Copake. Area Variance for a deer fence higher than 6 feet around the entire property.

~ Mr. Bob Bernstein and Rachel Kelly came to the table to present the project.

~ Jon Strom indicated that he and his wife were investor in the project.

~ Mr. Bob Bernstein introduced himself as the manager of Farmland Renewal LLC & Northeastern Farm Access LLC manager.

He explained that he was attracted to the area because of the local comprehensive master plan favorable to agriculture, the quality of the soil and the water and the right to farm laws applicable in the area.

The Farmland Renewal LLC group has been in contact with local officials, the residents and has consulted counsel.

Capital improvements such as electrical lines, water irrigation system are being installed. The work for a deer fence around the property is on the way.

~ Mr. Bob Bernstein requests the ZBA to make an interpretation and a determination that there is no need for a variance to install the deer fence taking in consideration that the purpose of the fence is to protect agricultural crops. Other means of protection were investigated and the fence is the most acceptable option for that purpose. Crops are already in the field at this point and if Farmland Renewal has to go through a regular procedure it will put the income of the three farmers that are leasing the land in jeopardy. Under the right to farm laws it is his understanding that this is a permitted installation.

The letter submitted dated May 14, 2014 highlights this points.

Similar fences are in existence in Copake and it appears that no permits were issued for the installations.

~ Hilarie asked for details about the fence.

~ Mr. Bernstein indicated that natural locust posts will be used, 60 feet apart, galvanized 6"x 6" wire mesh will then be installed. There will be 10 customs built wooden gates. The fence will be set back 12 feet from the pavement although it is allowed to install it closer. On the lines abutting private properties the fence will be installed at or close to the property line.

~ Hilarie asked if the area of wet land will be disturbed. Mr. Bernstein indicated that fencing will go around the wet land areas. The fence will be within a 100 feet of the wet land.

~ Ken Dow noted that he had contacted AG & Market. He indicated that there is a question; can the local zoning laws be applied in the case of an agricultural development? Ken Dow quoted section 305 of the Ag & Market

"Policy of local governments. a. Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts."

He noted that it appears that it is common practice to erect deer fencing to protect crops. For an appeal on interpretation from the building inspector it should be subject to a public hearing. The ZBA in order to make a determination on the building department interpretation is bound to hold a public hearing.

~ Hilarie noted that the public should have a chance to be heard on the matter.

~ Mr. Bernstein noted that no one else in the past asked for anything before installing such kind of deer protection. He was under the impression that just applying for a permit for the fence would suffice. He now finds himself having to

~ Frank asked why the tree farm did not apply for a permit.

~ Ken Dow recommends to the board, based on the Ag & Market laws, that it would be an unreasonable restriction to prevent Farmland Renewal from installing the fence.

~ Hilarie wanted to make sure that the 25 foot easement from the center of the road was going to be respected.

~ Bernstein noted that the fence will be well over the 25 feet easement. The underground electric and irrigation system are in the budget. A conservation easement will be put on the land. The farmers agreed to make the area accessible to the public, there will be gates and paths through the area.

~ Adam Resnikoff noted that other farms do not use fences around their fields. He asked if any consideration was given to the aesthetic of the fence.

~ Bernstein indicated that the posts are of locust wood, they will age to a grey color. The fence itself is made of galvanized wire and disappears in front of the crops. He explained that the exploitations are small and there is a greater risk to lose a significant amount of crops in this case hence the need for protection.

~ Frank noted that the concept of the deer “fence” is accepted by the industry but in fact it is a deer ”barrier” ; a transparent element.

~ Hilarie indicated that from a procedural point, the board cannot just say yes or no without a public hearing.

~ Ken Dow responded that for a variance, yes, a public hearing is necessary..

~ Bernstein noted that the abutters directly adjoining the farm property were contacted and invited to a presentation on April 17. The only issue that was raised was about the access from Taconic Street.

~ Frank emphasized the fact that the locust posts will turn a grey color making them even more transparent.

~ Mr. Bernstein asked if there was a possibility to have a special meeting for this application. He was told that if the members can get together there might be a meeting earlier than the 26 of June.

Hilarie Thomas asked for a motion to accept the application for a public hearing on June 26 or earlier if possible. Michael DiPeri made the motion, Frank Peteroy seconded, all in favor. The application will be referred to the planning board.

3) 2014-07 Goldman, 163 Golf Course Rd. Tax map # 165.5-1-13. Area Variance for paved driveway and shed: work within 100 feet of water body.

Mr. Goldman came to the table to present his project. He wants to pave his driveway with associated retaining wall and storm water management, construction of an arbor over the driveway and installation of an 8x8 shed. The work proposed will be done within a 100 feet of Copake Lake. The application will be referred to the planning board.

Hilarie Thomas asked for a motion to accept the application for a public hearing June 26, Michael DiPeri made the motion, Jon Strom seconded, all in favor.

Continuation of Public Hearing for ;

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 and Tom Gilbert were also in the audience.

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

Ken Dow started with a clarification, that unless it has already been done, details and documents from the 1989 to 2003 previous applications have to be part of the records and included in this application. References are constantly made to the prior applications, therefore should be in the records.

Hilarie went through the following Correspondence:

— April 24: From Andrew Gilchrist

April 24: From Stephanie Ferradino

April 24: From Hillsdale-Copake Fire District.

May 6 : Forwarded from Planning Board letter from David Silver.

May 7 : From the town of Egremont, notice of a public hearing for Kayvan Hakim 13 Nicholson Road. Hilarie asked if anyone knew what this

was in reference to. It appears it had to do with the relocation of a maintenance building. Mr. Freeman indicated that a hearing took place.

May 9 : From P. Prendergast ; Hilarie read the letter.

May 19: From Stephanie Ferradino in ref to Ms. Breen health condition.

May 19: Vanessa Beat, Amelie and Eline Karlen in support of Swiss Hutte .

May 21: From Ueli H. Burkart in support of Swiss Hutte.

May 21: From Astrid Meyer in support of Swiss Hutte.

May 22: From Ulrich Toggenburger in support of Swiss Hutte.

May 22: From Hillsdale Copake Fire District.

~ Hilarie mentioned the planning board concerns about the ladder truck access to the site. Mr. Freeman indicated that at the meeting with the fire department these issues were discussed and it was agreed that improvements will be made on Nicholson road in order for cars to travel easily in case of an emergency.

~ Mr. Miller from the Hillsdale Copake fire district confirmed the discussion with the developer. He indicated that the access to the back of the building was examined as well as the water supply and its source. Mr. Freeman asked Mr. Miller to confirm that the two existing means of access were acceptable to the fire department. The ponds were re-surveyed and the location of the water pumps was reconfigured to comply with the fire department requests.

~ Jon Strom asked for clarification about the “dual access” that was mentioned by Mr. Freeman on Catamount Road. Freeman noted that they will work with the town of Egremont to improve Nicholson road pavement and its intersection with route 23. The primary access will be Catamount Road.

He went on and explained that a 16 foot access area behind the building will be available for the fire department. The plan is for three buildings; the first one with 66 units, construction phase approximately one year. As soon as the sales are completed the project will go on to the second building. The second building will have only 18 units. The estimated total construction should not take more than three years. The third building will be similar to the first one with 66units as well. The sales process is estimated be to spread over ten years.

~ Frank Peteroy asked about the fire rated separation between the buildings.

~ Jon Strom asked again a confirmation by the fire department that the amount of water available in case of a fire would be sufficient.

~ Mr. Miller responded that the water tower capacity was increased to 70,000 gallons. Also access to the second pond will improve the guaranty for an adequate amount of water.

~ Hilarie questioned the description as mixed use project.

~ Mr. Freeman explained that there will be different type of businesses, a lounge, a restaurant, a spa, a convenience retail store, all located in the first building. The lockers will be available to the owners only. The retail will be more modest than in the previous project.

~ Howard noted that the previous SEQRA finding statement refers to retail and dinning opportunities commonly found at resort hotels to meet the basic needs of the customers of the resort. Restaurant and kitchen are regulated by Columbia County Department of Health. The restaurant will be open to the public as well as to the resort hotel customers.

~ Hilarie questioned the need for a separate use variance for the restaurant and the commercial space.

~ Howard pointed out that resort hotels provide full service to their clientele and the use variance as been traditionally looked at by the town of Copake collectively. All the elements of the project have been presented in the application, in the narrative, and on the floor plans. What else could be required? The restaurant and the commercial space are part of the application for a use variance for a resort hotel.

~ Stephanie Ferradino pointed that the ZBA cannot grant a use variance that was not applied for. Each use has to be considered following the Copake code.

~ Howard insisted that the restaurant and commercial spaces are part of a resort hotel, and all the different parts were included in the application.

~ Hilarie feels that if dinning is offered to the public outside of the resort hotel it becomes a full fledge restaurant.

~ Ken Dow reading the Copake code noted that dinning is part of the description under hotel and resort hotel, and if there is ambiguity the ZBA can make a reasonable reading of the description.

~ Howard indicated that the Planning Board SEQRA for the Neopolis project reads that “ the resort hotel will offer amenities such as an in ground pool, a pedestrian plaza, landscaped parking areas and include convenience and retail stores for a total of approximately 15,000 square feet. Dinning facilities were also added for the convenience of the hotel resort guests.”

~ Hilarie maintained that based on the Copake code a separate use variance is required for the restaurant and stores.

~ Stephanie Ferradino concurred; referring to article 232-28 F of the Copake code. "Each use has to be considered as individual use".

~ Ken Dow disagree, each use has to be evaluated on its own merit. The different amenities and recreational facilities are all components of a resort hotel. Each amenity cannot be isolated; a special use permit does not need to be issued for each use.

After a question from Adam Resnikof, Harry Freeman confirmed that the separate amenities were taken as a whole by the Planning Board in December 2013 as well as on the prior application in 2006.

~ Frank Peteroy clarified that Hilarie Thomas in fact is acknowledging that the application has not been executed. Each such use has to be considered an individual use.

~ Harry Freeman insisted that to qualify for a "resort" description a hotel has to offer amenities such as dining and recreation.

~ Jon Strom noted that this project is one, the ZBA does not need to have six different applications presented but each use has to be itemized on the application

~ Stephanie Ferradino argued that transparency is what it is all about and the neighbors should exactly know what the project will consist off and each use has to be reviewed, that is the purpose of a public hearing.

~ Ken Dow stated that the board can make a reasonable assessment of what constitutes a resort hotel. Recreation facilities are part of a resort hotel. A special permit is not necessary for each item.

~ Bod Haight from the Planning Board indicated that the board accepted the different amenities as a package including the spa and that from the beginning all the different elements constituting the project were taken in consideration.

~ Hilarie asked if anyone in the audience had comments.

~ Daniel Tuczinski Esq. is covering tonight for Mr. Gilchrist. He represents the Alpers at the Swiss Hutte , he came forward and indicated that he had informations that the ZBA should be aware of. The Alper's business will be in jeopardy if the town allows this project the way it is presented to go ahead. A law suit in state Supreme Court has been commenced in order to force the applicant to respect the agreement that was signed between the Alpers and Catamount. Mr. Tuczinski stated that this board cannot take any action on this application as proposed.

Mr. Tuczinski explained the details of the land swap that was agreed to. The Copake town supervisor and Mr. Edgar Master; Planning Board Chairman at the time approved the Neopolis project subject to a land swap between the Alpers and Catamount. Catamount did not have legal title to a portion of the access road to its proposed project and needed the Alpers to convey title to their property to improve a roadway leading to the project. The two parties sat down and made an agreement to transfer title to certain parcels of real estate property necessary for the realignment and reconstruction of Catamount Road in the town of Copake to support the development of the project. Pursuant to the agreement, the project was design to include a delivery and emergency access Road on property own by Catamount. The new access road was designed for public safety as well as for diverting delivery and construction traffic, including bulldozers, excavators and trucks away from the Alper's business; the Swiss Hutte Inn and restaurant

The community benefited all around, the Planning Board granted site plan approval for the project subject to compliance with the terms and conditions of the agreement. The Neopolis project was never built.

Now a new developer comes into play, they apply for state funding and presented an application filed in August 2013 showing that all the permits for the project had been approved. All the elements of the Neopolis project are used in order to apply for state funds however some other "details" like the construction of a new emergency access road are now taken out of the previous plan. Mr. Tuczinski believes that Rock Solid Development has different plans for the area than the plans that are presented; he submitted a map showing a plan for a "60 to 80 room potential hotel site" right of off route 23, just South of Ms. Breen's property.

Mr. Tuczinski believes that is the reason why the developer refuses to build the emergency road that was planned in the previous project. He recommends that the ZBA should not proceed any further with this application until this is ironed out.

The ZBA has to have all the elements before they go any further. Before issuing a special use permit the ZBA has the moral obligation to assess the detriment to another business. The Swiss Hutte will never survive a 10 year construction period with concrete mixers and dump trucks activity at their door.

~ Tom Gilbert owner at Catamount asked to speak about the agreement mentioned and indicated that a second agreement has been signed that superseded the original one.

~ Frank Peteroy asked about the terms of the second agreement.

~ Tom Gilbert said the second agreement voided the first one. The land in front of the Swiss Hutte is now owned by the Alpers, they use it to set up tents for events like weddings and such.

~ Frank also asked about the 30 feet of right of way taken by the town to get to the end of the 50 foot right of way to the edge of the project.

~ Tom Gilbert noted that the first agreement was never executed. The Swiss Hutte came back to Catamount and asked for that piece of land back and that was the term of the second agreement. He read a letter he had written. (Copy of that letter can be found in file at the town clerk's office and the ZBA office).

~ Gurt Alper stood up and talked about the road issue, He stated that there was no second agreement. His only concern is the protection of his business that he has been running for the past thirty years. He employs a number of local people. He worked on an agreement 12 years ago to make such a project advantageous to all involved party. He receives letters from customers who want to find out if construction has already started and will possibly cancel their reservations.

~ Ken Dow pointed out that the ZBA has to consider the zoning code and to consider the impact of the proposal on the local business and community. The fact that there might be a breach of agreement is a civil matter that has to be handled by the courts.

~ Daniel Tuczinski indicated that the ZBA has the right to determined that there was an agreement that is part of the previous application. The ZBA should not allow the applicant to breach the contract that was previously approved by the town and is part of the application.

~ Steve Andrews owner of the Sylvanus Lodge in Hillsdale spoke in support of the Berkshire Mountain Club project. (Copy of that letter can be found in file at the town clerk's office and the ZBA office).

~ Elisabeth Hamm an employee of the Swiss Hutte spoke in support of the Alper's Restaurant and Inn.

~ CEDC Executive Director Kenneth J. Flood said a few words in support of the Berkshire Mountain Club project and offered his assistance if needed.

~ Howard wanted to respond to the issue of the road swap. In January of 2011 the Alpers approached Catamount with a new deal; No land swap had been done because the Neopolis project never happened. The project proposed is much smaller than the Neopolis project. The competitive grant process for state funding is gruesome and the developer has to present and demonstrate what possible opportunities are available for economic development.

~ Stephanie Ferradino asked why the map shown by Daniel Tuczinski indicated a 60 to 80 room potential hotel site.

~ Howard responded that although he was not involved with the process, in the application for the state grants, the Inn owned by Linda Breen was included in the description. The location being already used as an Inn was of economic interest for the state of New York. The property in question is not in contract with the developer and Howard does not believe that Ms. Breen has any intention of selling at this point. The funding from the state of New York will be allocated only after the permits and use variances are granted. With this project the area will become a four season resort and the economical impact will be substantial.

~ Daniel Tuczinski declared that the developer is fully aware of the damage that heavy constructions during a long period of time will create on the adjacent properties and the decrease of land value that will follow. The Alpers would have never agreed to that land swap agreement for any other reason than to protect themselves.

~ Stephanie Ferradino asked the ZBA to look carefully at the details of the application. She believes that a height variance should be applied for. She finds the explanation for the note for the "60 to 80 room potential hotel" on her client's property unsatisfactory.

~ Jacky Burdick is a Copake resident, she works for Catamount. She declared that this project is of great economical importance for the town.

~ Adam Resnikoff commented that the main question for this board is how detrimental to Linda Breen and The Swiss Hutte this project will be. A discussion between all the parties involved should take place and decisions to work things out have to be made or there will be no end in sight.

The Public Hearing remains open until next month June 26.

Meeting was adjourned at 11:30 PM/

Respectfully submitted.
Recording Secretary.
Veronique Fabio

