

**Town of Copake
Zoning Board of Appeals
Minutes-May 24, 2012**

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on Thursday, May 24, 2012, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman Frank Peteroy at 7:00 PM.

Present at this meeting were: Frank Peteroy, Michael Deperi, Emilee Drobbin, and Glenn Schermerhorn. Hilary Thomas and Jon Strom were absent.

Kenneth Dow, Copake Town Attorney, was also present for this meeting.

An audience of about 20 was present including Jeff Nayer; Town Supervisor and Ed Ferrato; ZEO.

Minutes:

Frank asked to pass on the reviewing of the April minutes.

Public Hearing:

1. Application # 2012 04 Steve and Eva Dowdell, 34 Birch Road, Taconic Shores. Area variance for erection of a screen porch on a non conforming lot.

Frank asked the audience if anyone had a question or comment. Frank reviewed the site design and the survey received on May 5, 2012.

Glenn stated that the new documents were helpful. There were no questions from any of the board members and Frank 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

Frank added that the buildable superficie of the property is 5.000.. square feet and the present improvement well within the square footage allowed.

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

Frank noted that a porch was created and the set back was violated by about 7 feet.

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.

Frank asked for a vote on application 2012-04.

Frank; Yes Emilee; Yes Michael; Yes

Area Variance granted

2. Application #2012-06 , Larrison and Frances pross, 451 Lakeview Rd. Craryville , Area Varaince for installation of a roll in Shed on undersized and Non conforming lot.

Frank questioned the audience for comments.

Frank asked if there were going to be any Utilities in the projected installation of the shed.

Mr Dowdell responded; no.

Frank noted that the shed will be used strictly for storage and no other purpose and that the lot is 60x60 feet.

Mrs Dowdell indicated that there was a separate deed for that particular lot.

Frank 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

Frank noted that a shed was going to be installed.

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.

Frank asked for a vote on application 2012-06

Frank; Yes Emilee; Yes Michael; Yes

Area Variance granted

Up for vote:

Application # 2012-03 Copake Golf Course , Area variance for Relocation and reconfiguration of Golf Course Road and piping under stream.

John Urban was present.

Frank asked for data on flow rates.

Ken Dow pointed out that the balancing between the benefits to the applicant and the detriments to the community should be clearly stated in the records and be part of the decision making in granting the variance.

Emilee wondered if the two projects should be treated separately.

Frank stated it was one application and 2 projects.

Ken Dow indicated that the 2 projects should be treated individually.

1 Relocation of the road

Frank 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 road reorientation is a beneficial change for the community. No neighbors have spoken against the project.*

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: Yes

**All approvals from the County Planning Board, Army Corp of engineers and the DEC have been obtained.*

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

**Moving the road away from the lake creates fewer chances for pollutant to runoff in the lake. Applicant has explained that all precautions will be taken during the work to prevent any spillage in the lake*

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

Ken Dow added that in light of all the factors the ultimate question in granting a variance is the balance between the benefits to the applicant against the detriments to the community.

** Benefits for the applicant are in this case the increase of the property value in creating build able lots with direct access to the lake and the potential profit from the sale of created lots.*

** There are no detriments to the community. Benefits are better location of the road away from the lake, and increased taxes.*

2 Installation of sewage pipes under the creek bed.

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 does not create any change to the neighborhood; new pipes will be connected to a well functioning existing system. Applicant has responded to all questions pertaining to possible environmental impacts. All approvals from different agency have been granted.*

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: Yes

**All approvals from the County Planning Board, Army Corp of engineers and the DEC have been obtained.*

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.

Frank asked for a vote on application 2012-03

Frank; Yes Emilee; Yes Michael; Yes

Area Variance granted

Public Hearing

3. Application #2012-07 Nielsen; Southwest Colony drive. Copake Lake, West Copake. Install patio and steps within 60 feet of the lake.

Lisa Nielsen came up to the table.

Frank asked applicant if she was able to get any documents from Chicago Title.

Mrs. Nielsen pointed out that the easement problem was not the reason why she was before the zoning board.

Frank made a motion to open the public hearing, Emilee seconded.

Frank asked the audience for comments.

* Lorna Drew took the stand. She is an adjacent property owner (right side of Nielsen's looking towards the lake). She complains that since work has been done on the Nielsen's property people are walking on her property because the existing path to the lake has disappeared. Bushes and rocks are obstructing the path. She is concerned about liability. She noted that the variance granted previously by this board has not been respected and the 1st patio has doubled in size.

* Eileen Batycki noted she presented a copy of the original variance granted for a shed. The town historian, Gloria Lyons provided Mrs. Batycki with that copy showing the right of way on the right side of the property (Drew side).

On the right side of the Nilesen's property, the 15 feet wide right of way has been planted with trees blocking the access to the lake; on the left side a wood fence has been erected.

Ken Dow pointed out that the zoning board was here to take a variance in consideration and the issue with the right of ways is a private matter that will be taken in consideration in the granting of a variance however the ZBA does not have the authority to answer to the issue of the right of ways. Frank clarified that in August 2011 when a variance for the 1st.patio was granted, the board was aware of the two existing encumbrances and the two separate deeds clearly showed the existence of the right of ways. The purpose of this hearing is to examine the request for a variance.

Emilee asked Nielsen to clarify that the request for a variance is for a second patio that extends towards the lake.

Jeff Nayer stated that in 2011 when the variance for the patio was granted, the applicant agreed to respect the 15 foot right of way on either sides of their property. The applicant has violated the term of the granted variance and the town can "pull "the variance.

Mr. Robert Piper spoke about the 1960 deeded right to the lake. He pointed out that in 2011 a variance for a 20x20 patio, 60 feet from the lake was granted and now boulders block the path. Some blocks were removed after Mr. Piper spoke to Jeff Nayer about the problem, but some rocks remain. Mr. Piper asked who was responsible to enforce the respect of the previously granted variance. He also pointed out that the August 2011 Minutes were not posted on the town website. Frank assured Mr. Piper that he will be given a copy of the August 2011 Minutes.

Lawrence Mercillott stated that the purpose of the ZBA is to give reasonable relief to property owners while maintaining the zoning board ordinances that were design to protect the character of the town. The Niensens were given ample relief; i.e., 60 feet set back for their patio from the lake instead of the 100 feet required in the zoning code. He noted that Mrs. Nilesen admitted to

receiving compensation from the title insurance company. He feels it would be unfair to grant a variance for the second patio.

Someone in the audience proposed that the zoning inspector should go on site and measure the patios to get a clear picture. He suggested that the 1st patio also encroached on the easement.

Mrs. Nielsen explained that she agreed to remove the rocks and the trees but due to the weather was not able to complete the work. Whatever she has done so far was for safety and to improve the paths.

Frank pointed out that it appears that 2 right of ways existed and the previous variance took that in consideration at the time. The 1st patio appears to be 18 feet from the property line.

Emilie asked how far was the 2nd patio from the lake, Nielsen answered it was 30 feet from the lake. Frank noted that the steps leading to the lake were 20 feet away from the water.

L. Mercillott stated that the lake is now low and that should be taken into consideration when looking at the set back.

Ken Dow asked why Nielsen built the 2nd patio.

Nielsen responded that her landscaper got overzealous and she had blocks left over, he used them up and created a second patio. She was absent at the time and discovered the 2nd patio once it was finished. She stopped all work as soon as she received the stop order from the building inspector.

Sue Melnick stated that the overzealous landscaper should remove the 2nd patio at his own cost. Frank noted that May 2012 the boulders were still in place.

Ms. Piper questioned the issuance of a building permit for the house while the applicant was in violation for the 2nd patio.

Frank answered that legally a building permit cannot be denied for that reason.

Ken Dow explained that it is a state law and it might seem not to make sense but a permit can not be denied.

Frank noted that the fact that the rights of way were not respected will be taken in consideration by the members.

Mercillott clarified that the issue with the neighbors is the paths to the lake that are blocked and the applicant is looking for a variance after the facts.

Nielsen assured that she has no intentions of preventing people from walking on the rights of ways. Lorna explained that she is a marine biologist and the need for a set back of 60 feet from the lake is real, it provides drainage of potential pollutants through the soil before it gets to the lake.

Anything that falls on the patio now will flow directly into the lake.

Brenda Piper pointed out that trees were still blocking the path and questioned why they ever were planted in the right of way.

Nielsen stated that she had a stop work order and was waiting for the variance to find out what to do next.

After consulting with the members, Frank decided to table the application.

Public hearing is postponed until next meeting in June when all the board members will be present.

New Application

2012-08 Robert Kitchen , Pigasso farm, 480 Farm rd. Copake Area and use variance.

Mr. Kitchen is looking to process 2600 chicken a year on his property

Frank asked for a motion to open the meeting, Michael made the motion to Emilie seconded.

Robert Kitchen came up to the table.

Frank asked for more details from Ag & market and noted that the property is located in the scenic overlay and processing poultry is not permitted.

Mr. Kitchen has 2 options for a "processing" building; 1. Amish prefab. building 10x30 on a concrete base with water being pumped or a trailer that can be completely set up for the purpose and 90% concealed.

2500 chickens are being raised on the property now. They are held in 4 12x12 moveable cages located in the pastures with the sheep.

Mr. Kitchen spends \$14,000. a year to have his chickens processed outside. He would realize a very substantial saving doing it himself on his property. Also he is now limited to sell his birds from his farm stand or farm markets, with the new building the USDA inspection label would allow him to sell his poultry to retailers and grocery stores.

Mr. Kitchen explained that 1000 birds can be processed on his property without regulation as per Ag & Market rules.

Ken noted that the Copake code does not allow for slaughter houses, the code does not define the term. 2600 birds processed would qualify the activity as a slaughter house therefore a use variance is required.

Glen asked is sheep or pigs are now processed on the property, Mr. Kitchen said no.

Frank asked about the building.

Mr. Kitchen stated that Mr. Clarence Davis head of poultry for Ag & market told him that the In order to process the poultry 3 rooms are needed; a room for killing; one for evisceration and one for chilling. Rooms are completely lined with a non permeable surface on walls and ceilings that can be hosed down. Mr. Kitchen has access to a free trailer and given the option would rather convert the trailer than buy the Amish building.

Hand washing station will be provided.

There is also a need for an area variance because of the building.

Ken noted that 4 things have to be taken in consideration and documented.

Reasonable return can not be realized without the variance.

Hardship is unique.

Impact on neighbourhood.

Hardship has not been created by applicant.

Frank asked for financial documentation.

The activity is seasonal, six months per years.

Ken noted that we are in an Ag. District, the birds are in pastures and agricultural laws promote and preserve agricultural land.

Frank asked for a motion to accept the application, Michael made the motion, Emilie seconded.

Public hearing scheduled for June 28.

Discussion about the minutes emailed instead of mailed. All board members agreed to receive the minutes through email.

The August 2011 Minutes will be posted on the town web site.

Emilie made the motion to close the meeting, Michael seconded, motion carried unanimously.

Meeting was adjourned at 9:10

Respectfully submitted.

Veronique Fabio

Recording Secretary

