

# Town of Copake Zoning Board of Appeals

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## Meeting Minutes of May 28, 2015

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on May 28, 2015, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of about 40 was present as well as;

Jeff Nayer: Town supervisor. Edward Ferrato: Building Department.

Marcia Becker: Planning Board and Susan Sweeney: Town Board Liaison.

The meeting was called to order by Jon Strom at 7:00 PM.

### Roll call:

Present at this meeting were: Frank E. Peteroy, Jeffrey Judd, Jon Strom, Michael Diperi, and Hilarie Thomas.

Kenneth Dow: Copake Town Attorney was also present.

Veronique Fabio: Secretary was present to record the minutes.

### Reading and approval of the minutes of preceding meeting:

~ Jon Strom asked if all the members had read April 23<sup>rd</sup>. minutes.

*~ He asked for a motion to accept the April 23<sup>rd</sup>. minutes, Michael Diperi made the motion, Jeffrey Judd seconded, all in favor.*

Jon Strom announced that the Pritchett/ Casey application will not be reviewed tonight as the applicants need more time to rework their plans for the new construction. The hearing will go on next month.

Someone in the audience asked if the Planning Board letter listed in the correspondence will be read tonight. Jon indicated that the letter reflects the general consensus regarding constructions near a body of water; Away from the shore is always a more desirable location.

**Correspondence:**

- 4-27-15 From Victor Goode in ref. to Ben Meir
- 5-05-15 From Victor Goode in ref. to Ben Meir (Letter was forwarded 5-6-15 to Code Enforcer Ed. Ferrato).
- 5-07-15 From Jeff Nayer; Stop order for Ben Meir has been issued.
- 5-13-15 From Zoning Enforcement officer in ref. to meeting with J.Luviene and J. McGrath.
- 5-20-15 Recommendations from Planning Board for Pritchett/Casey & Shadic
- 5-18-15 From Sandy Harris in ref. to Ben Meir
- 5-22-15 From Victor Goode in ref. to Ben Meir
- 5-23-15 From Richard Schroepel
- 5-24-15 From Marilyn Burch
- 5-24-15 From Al Fair
- 5-24-15 From Chen Jing, Corcoran Group
- 5-24-15 From Dan babush
- 5-25-15 From Thor Hilmar
- 5-25-15 From Martin Moore-Bridger “

An additional 6 letters in reference to Ben Meir were received on the day of this meeting as well as a phone message left by Peter Bloomfield commenting that; “Bad precedent will be created if the special use permits are issued”.

Jon Strom indicated that the correspondence pertaining to Ben Meir will be reviewed when the applications are looked at later.

**Closed Public Hearing:**

None

**Public Hearing:**

1) **2015-08 Mathew Shadic. Pumpkin Hollow Rd. North. 165.-1-3.2.**

Area Variance, left side property set back variance of 25feet for new house instead of the required 50feet.

Mathew Shadic and his spouse came to the table. They indicated that only 1.5 acres of their property was actually buildable because on the steep grade.

***~ Jon Strom asked for a motion to open the public hearing, Michael Diperi made the motion, Jeffrey Judd seconded, all in favor.***

Jon noted that the Planning Board was concerned with erosion and a sediment control plan should be in place during construction, they also recommended that plantings after completion should be shown on the plans.

~ Jeffrey Judd noted that he had made a site visit and it appears that a considerable amount of leveling has been done. He was wondering why a variance was necessary as it seems that there is plenty of options to build. He asked about the size of the house.

~ Mathew Shadic noted that the best option for them was what is proposed. The house will be 59' 11.5" long and the garage 28 x 28' with a connecting breezeway.

Questions were asked about the location of the septic (45' from the property line), and the well will be located 100' from the septic.

~ Mathew Shadic indicated that the plan provided to the ZBA was drawn before all was leveled.

~ Frank Peteroy asked if the excavation went as far as they needed and if there will be a basement in the house. If it is shale rock it could be removed.

~ M. Shadic responded that it is all rocks beyond what has been done, and there will be a basement in part of the house and just a crawl space in other areas.

~ Jeffrey Judd suggested that the garage could be relocated elsewhere to avoid the need for a variance.

~ Jon Strom asked if there were comments from the abutters and if anyone in the audience had questions.

~ John Meszaros an abutter on the property left side line in question, commented on the effects of the clearing and excavating on his property and the amount of water run-off. He feels the value of his land will decrease if the proposed construction plan is allowed. Meszaros explained that the applicant has a 5 acres lot, he should be able to build his house respecting the local set back variances. The footprint could be moved around. Mr. Meszaros is convinced that the applicant has other options. M. Shadic's project, if approved, will be towering over Meszaros's land therefor decreasing its value. It will have a negative impact. Proper run-off and drainage has to be dealt with, not just let go downhill on his property.

~ Frank Peteroy suggested that the land can be further excavated, retaining walls can be built as high as necessary. A structural engineer should take a look at it.

~ M. Shadic noted that a 10' retaining wall would be necessary as well as a variance from the ZBA and that would put the garage only 35' away from the left property line.

~ Frank Peteroy indicated that a new plan should be considered and the whole project moved around.

~ Jon Strom asked the applicant what his thoughts were about what is being said. M. Shadic commented that water runs downhill no matter what, regardless of the fact that there is a house or not on the property.

Drainage and trees planting are planned to minimize the impact of the run-off.

~ Jon asked the applicant for an erosion and drainage plan for the next meeting and recommended that the applicant takes a good look at the possibility of relocating the garage.

~ Jeff Nayer commented as a town resident that the variance requested is not unreasonable.

~ Mr. Meszaros stated that the project should be moved away from the property line as far as possible in order to protect the value of his land. The projected house is large and high.

~ Ken Dow clarified that the application is before the ZBA for one variance of 25feet.

~ Mathew Shadic agreed to try to rework the plans.

*~ Hilarie Thomas made a motion to keep the hearing open and continue on to the 25<sup>th</sup> of June, Michael Diperi seconded, all in favor.*

**2) 2015-01, 2015-02, 2015-03, 2015-04, owner **Alon Ben Meir**. The properties are located by the Upper Rhoda Pond. Special use permits are requested to rent the 4 homes as boarding houses.**

~ Jon Strom noted that an additional 18 letters on the matter were received this month showing the amount of interest that these applications are generating.

~ Jon Strom reminded the audience that the Zoning Board of Appeals' decisions are case by case, the rulings do not affect other properties only the one presented to the board. He added that this board does not create new zoning laws.

~ Ed Ferrato related the results of his meeting on April 21<sup>st</sup> with J. Iuviene and J. McGrath. He indicated that Joseph McGrath holds a place on the variance board for NYS.

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On April 21, 2015 a meeting was held with Mr. Joseph Iuviene, Joseph McGrath, and myself to discuss the Alon Ben Meir project. We discussed the classification of the residences as far as how the New York State Uniform Fire and Building Codes are concerned. It was Mr. McGrath's opinion that the proposed occupancy use of the single family residences would not change under the circumstances. The use could not be considered a commercial use or a transient boarding house due to the fact that each bedroom was not being rented individually.

We further discussed that each individual sewage system for these homes was being evaluated. Mr. Iuviene stated that the applicant Mr. Alon Ben Meir will agree to set the occupancy for each individual house according to the size of the sewage system. This would be a number less than that for square footage of the bedrooms.

It was also agreed that these occupancy numbers would be in the renters leasing agreements so, they will have full knowledge as to how many individuals will be allowed in each home.

I have recently met with the contractor to discuss upgrades to each home so that they will be brought up to date with the latest New York State Uniform Fire and Building Codes.

These upgrades include: egress for bedrooms, smoke and carbon monoxide detectors, railings for staircases, fencing and gate requirements for a pool, and a pool alarm.

It was also discussed that the maximum number of occupants should be included in the rental leases.

The size of the septic system will determine the number of occupants allowed in each house.

~ Mr. Ferrato will be monitoring the progress of the improvements to the 4 houses to bring them up to code.

Mr. Freeman agreed with Ferrato's statements.

~ Jon Strom noted that the ZBA had received requests from some people to put a full stop to the activities at the houses in question and take actions against the renters. He reminded all that the ZBA is not an enforcing agency.

~ Ken Dow noted that even though there are 4 applications the comments are directed at the applicant as a group.

~ Hilarie Thomas suggested that when making comments people indicate their names, addresses and location of the property they are referring to.

~ Paul Freeman reminded the ZBA that there are 4 separate applications. Generic comments should not be applied to all the houses, one of them has never been rented as of today. He asked that people commenting indicate the address of the houses they are referring to. The notion of a commercial enterprise that was discussed at the first public hearing has no value following NY State determination that it is residential. These are 4 different applications for residential properties.

~ Jon Strom clarified that NY State can interpret one thing and the Copake code the same thing differently. For example the words "transient" and "boarding house" has different meanings in the Copake code and the NY State code.

~ Paul Freeman reiterated that the applications are for 4 separate residential houses to use as boarding houses as defined under the Copake code.

He noted that following the requests of the ZBA;

1) The septic systems are evaluated and updated as we speak.

Crawford & Associates is verifying what is in place and what needs to be done, certificates will be issued for each house. The capacity of 2 of the systems warranted an adjustment in the number of bedrooms.

2) Parking plans for each house are submitted to the ZBA tonight. There is more than adequate parking spaces.

- 3) Photos of the 4 houses, outside and interior.
- 4) An evaluation of the houses was made by Joe Luviene who is a license architect in NYS special attention given to fire safety updates. Also increasing the size of egress windows in some bedrooms, hand rails installation and other details of that type are in progress right now. Certificates will be issued upon completion of the work.

In term of modifications to the applications, having taken the size of the septic systems in consideration;

2111 C. Rt. 7A, the number of bedrooms is reduced from 4 to 3.

22 Howard Dr. is reduced from 6 bedrooms to 5.

- 5) Also taking to account the public requests some issues are being addressed. The removal of cross advertising; the properties will be offered for rent with no reference to the others houses. Language in the rental agreements was added in reference to noise and local ordinances. Tenants are now vetted and inquiries are made to assure that neighbors are taken into consideration. Quiet zones signs were posted.

~ Jenifer Crosby, employed by the Ben Meir handles the rental of the houses. She read a letter.

***A copy of that letter is attached to the minutes.***

~ Hilarie Thomas asked if Jenifer Crosby was responsible for the advertising on “Home Away” and why she was described as the owner of the property. Jenifer responded that the web site lists her as the owner because of a server problem. Hilarie noted that the houses were advertised for rent together, 14 bedrooms available in total.

~ Jenifer Crosby indicated that this was an old add. The properties are now offered for rent individually and she carefully screens the potential tenants. Beds have been removed as the number of bedrooms was reduced in two of the houses.

~ Ken Dow noted that the number of occupants can be part of the agreement.

~ Deanna Ben Meir introduced herself. She explained that they have a home in Ancram 5 minutes away from Copake. Between her and her husband they have six children and decided to purchase the houses by the Rhoda pond for them. They are more than willing to cooperate fully with the board and the community. They invested a lot of money in the 4 houses. They occasionally plow the dirt road (Howard Drive) at their own expense and even repaired it. She admitted making

mistakes at the beginnings with the rentals and are now better experienced and more discriminating. She is willing to work with the other residents to improve the ecology of the pond. They will pay for a fence to reduce the sounds if necessary. Noise rules in the new rental agreement are more stringent than the Copake rules. Jennifer Crosby screens the potential tenants very carefully and Mrs. Ben Meir indicated that they were more than willing to evict someone if the rental rules were broken. They participated in the maintenance of the ecology of the pond. They will no longer rent to cadets, wedding parties, colleges students and large groups. She requests that the special uses permits be granted to allow them to carry the expense of maintaining the houses.

Mrs. Siber of 2187 Route 7, made some comments about two incidents that took place with tenants from the Ben Meirs.

~ Norma Ramos an abutter to 22 Howard commented that all residents around the lake are impacted by the noise generated by the type of activity at the Ben Meir's houses. Objections have been raise consistently and nothing has been done. Three weeks ago a group of 18 young tenants were staying at 22 Howard. This is a business, a lot of money is made and the tenants do not care about the neighbors. The staff gets annoyed when phone calls are made. She doubts that thousands of dollars are going to be forfeited if there are complaints. The people in support of this activity all profit financially from it, they cannot be objective. The letters from people in opposition are directly impacted by this business. The purpose of zoning is to establish land use, a residential community cannot change and become a commercial area. The efforts made stated by the Ben Meirs have had no effect so far.

~ Jennifer Crosby argued that at 22 Howard on the week end of May 5<sup>th</sup>, 9 woman were renting and 8 men were staying at 2103 Ct. Rte. 7. Mrs. Ramos took pictures of these people and questioned them. On May 15, Mrs. Ramos also approached another family that was renting and later contacted the police on them.

~ Sydney Babush of 2108 County Rt.7, noted that the Ben Meirs have improved the houses. It is difficult to sell a house and it is better for the neighborhood to be able to rent the properties and pay the taxes than to abandon them. Since 1991 a lot of businesses have disappeared in Copake. Other towns around the area are flourishing Copake is not.

~ John Sebillo of 104 Juliana Dr. started renting from the Ben Meirs and eventually bought a home here. He has never heard any noise from other tenants when they were renting. He has a very positive experience with the applicant.

~ Jeff Nayer asked if the houses were rented now. If the homes are rented, the applicant is in violation of the zoning.

~ Paul Freeman noted that the Ben Meirs' as well as 35 other properties are offered for rent in Copake right now.

~ Victor Goody of 42 Howard, noted that he seeks protection from the town from the operation of a boarding house, he bought a home in a residential area and now a business is being operated next door.

~ Ken Dow clarified that in the Copake zoning code a boarding house special use permit would be allowed if it does not adversely affect the surrounding neighbors. It is not considered a business. A determination has already been made in the town code that a boarding house is allowed in a residential district providing a special use permit is issued.

~ Victor Goody noted that to be allowed there should be no detrimental effects resulting from the activity and it would have to be in harmony with the residential neighborhood.

~ Jon Strom reminded that the ZBA ruling is a one-time ruling on a specific case.

~ Marilyn Burch of Beach and Bartolo indicated that noise comes with living on a lake front. 22 Howard was vacant for many years, there was no noise. The area is growing, if we are careful and selective everyone will benefit from the activity. You cannot stop progress.

~ Cathy King of 2187 County Rte. 7, asked if the special use permits transfer when the houses are sold.

~ Ken Dow stated that when permits are granted they run with the land.

~ Chuck Bartolo owner of Beach and Bartolo stated that his agency was responsible for 52 rentals last year. Rentals allow them to showcase the area. A lot of home sales result from these rentals. The local restaurants are patronized, taxes and revenue are generated by the rentals.

~ Ken Dow referred to the Copake Zoning Code part 232-28 G and reminded everyone that the ZBA will make its decision based on what follows;

Before issuing a special use permit, the Zoning Board of Appeals shall assure itself of the following:

(1)

There shall be no detrimental effect by the establishment of such use.

(2)

Such use will be in harmony with the district in which located.

(3)

Such use will be in conformance with the New York State Uniform Fire Prevention and Building Code<sup>(1)</sup> and applicable local codes and ordinances.

~ Mark Gross of 2171 Route 7A, commented that may be the houses could be rented for longer terms that could possibly alleviate the tenants carelessness problem.

~ Julie Cohen stated that she owns an empty lot on Rhoda Pond and because of the present activity she does not plan on developing that lot. She is a former VRBO user, and experienced first-hand the problems linked with short term rentals.

~ Lindsay LeBreck made some suggestions to allow quick contact from the neighbors with the Ben Meirs' property manager.

~ Rochelle Eldenson of Betman Lane, commented that she no longer has neighbors, she does not know who is next door to her house. It took her years to decide where she was going to buy a home. Having four contiguous houses rented at the same time create an undesirable environment. The whole character of the area has changed.

~ Jon Strom talked about the information received in reference to the septic systems, the number of bedrooms, and the parking spots numbers.

- ~ Hilarie Thomas asked that the town engineer reviews the findings in reference to the septic systems as well as the egress from the bedrooms. An escrow account should be set up. She also noted that a SEQRA has to be done.
- ~ Jon asked the ZBA members for their opinion on that idea.
- ~ Ken Dow noted that a licensed engineer is looking at these issues now.
- ~ Frank Peteroy asked why the bedroom count was reduced on two of the houses.
- ~ Paul Freeman responded that two of the septic systems were inadequate for the existing number of bedrooms, therefore the number was reduced.
- ~ Jon Strom suggested that the ZBA tables the Copake engineer involvement until after the engineer for the applicant presents his report on the issues.
- ~ Norma Ramos raised a concern about insurance on homes that are rented.
- ~Jon asked for a motion to continue the hearing next month, Hilarie Thomas made the motion, Jeffrey Judd seconded, all in favor.***

### **3) New Application:**

2016-09 Edwin & Joyce Kuester, 277 Lakeview Rd.

Tax Map 155.18-1-39

Area variance to replace a deck in Copake Lake. The owners are represented by Lindsay LeBrecht.

She came to the table, and presented the project.

The owner want to replace an old deck on Copake Lake. Relief from article V section P (1) development within 100 feet of water is requested.

The new deck will be a little bit longer (60'x 4') that the existing one.

The members requested a rendering of the projected deck and a cross section of the deck.

DEC permit is current.

The application will be referred to the planning board.

***~ Jon Strom asked for a motion to accept the application for public hearing on June 25, Michael Diperi made the motion, Jeffrey Judd seconded, all in favor.***

### **Internal business:**

None

***~ Motion to adjourn was made by Jon Strom, seconded by Jeffrey Judd, all agreed.***

*The meeting was adjourned at 9:40*

**Next meeting June 25, 2015**

Respectfully submitted.  
Veronique Fabio  
Recording Secretary.