

Town of Copake Zoning Board of Appeals

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Meeting Minutes of June 25, 2015

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on June 25, 2015, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of about 30 was present as well as;

Edward Ferrato: Building Department. Susan Sweeney: Town Board Liaison. Bob Haight: Planning Board and Jeff Nayer: Town Supervisor.

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. Hilarie Thomas was excused.

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 the May 28 minutes.

~ He asked for a motion to accept the May 28 minutes, Michael Diperi made the motion, Jeffrey Judd seconded, all in favor.

Correspondence:

~ Jon Strom informed the audience that all the correspondence has been read by the ZBA members.

- 5-31-15 Lindsay LeBrecht confirming ZBA requested doc.**
- 6-05-15 Planning and Zoning summer training.**
- 6-11-15 Susan Sweeney in ref. to Association of Towns providing training with a land –use expert.**
- 6-15-15 Ed Ferrato update to referral for Casey/Pritchett.**
- 6-22-15 Paul Freeman request to postpone public hearing for ben Meir.**
- 6-23-15 Marc Gross**
- 6-24-15 Review from Planning Board for Kuester.**
- 6-25-15 Hilarie Thomas won't be able to attend the meeting tonight.**

In opposition to the issue of the special Use permits for the Upper Rhoda lake properties;

- 5.28-15 From; Mel & Anita Salberg, Jared Scharf, Conrad E. Pollack, John Gisondi, Benjamin Kerbin Evans, Paul Plotkin, Mary Ann Perle, Eric Stein, Victor Goode & Norma Ramos, Joan Perkell, Peter Bloomfield, Rochelle Edelson, Johanna & Antonie Vrien.**
- 6-02-15 From Paul & Lauren Blum, Jared Scharf.**
- 6-03-15 From Norma Ramos**

In support of the special use permits;

- 5-24-15 From; Mike Robertson (Spa Angel), Juan Kreutz, Kyleigh Zengen (Manager at the Greens Restaurant), Marilyn Burch (Beach&Bartolo Real Estate).**
- 6-22-15 From Fred Moran.**

Closed Public Hearing:

None

~ Jon Strom suggested that tonight the new applications should be reviewed before the Public Hearings. The ZBA by-laws do not specify when new applications should be considered and it would save new applicants from having to seat through 2 or 3 hours of public hearings.

The other members agreed.

New Application:

- 1) 2015-10 Sawyer / Zarillo, 1084 Lake View Rd. Taconic Shores. Tax Map# 176.1-3-16 Area Variances requested for additions to an existing house, work to be performed within a 100' of a body of water.

Mark Zarrillo, landscape architect is presenting the project for his daughter Tarin Zarrillo. He noted that the lot is a non-conforming lot.

The existing house on the lot is 24' x 48' and the owner wants to build a 24' x 20' addition. He emphasized that the addition will not increase the non-conforming existing conditions.

~ Jeffrey noted that the project will bring the house 7' closer to the lake.

Rear yard variance of 34'.3"

Right side variance of 13'.3"

Relief from 232-9P (1) & (2) building within 100' of water.

All the abutters are listed.

~ Tarin Zarrillo indicated that DEC permit was in the works, a letter from them is in the application.

Taconic shores is aware of the project an application has been filed with them.

~ Jeffrey asked about the height of the final house.

~ Mrs. Zarrillo said the house will be one foot higher than the existing house, going from 14'.5" to 15'.7". The house will be 500 square feet. Number of bedrooms will remain the same.

The application will be referred to the Planning Board.

~ Jon Strom asked for a motion to accept the application for public hearing on July 23, Michael Diperi made the motion, Jeffrey Judd seconded, all in favor.

~ Jon Strom informed the audience that the Ben Meir applicants are not here tonight, they are still working on details to upgrade the septic systems and other safety code issues. Time will be allowed at the end of the meeting for abutters to make comments if necessary.

Public Hearing:

- 1) 2015-09 Edwin & Joyce Kuester, 277 Lakeview Rd.
Tax Map 155.18-1-39

Area variance to replace a deck on Copake Lake. Lindsay LeBrecht and Edwin Kuester come to the table.

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

Jon Strom read the Planning Board referral;

At the June 4, 2015 Planning Board meeting the members reviewed the application of Edwin Kuester. Board concerns included the fact that there were no conditions or explanations submitted with the DEC permit as is customary. Ms. Becker believed the application is in violation of the Zoning Code as stated in Section 232-9P (1)

(No development shall be permitted closer than 100 feet to a stream, creek, wetland or other body of water.)

Some Board members felt that Mr. Kuester should repair what presently exists and not expand upon the development while others felt it was beneficial to clean up the area. Attorney Dow suggested Town Code 232-24(a)[1] & 232-24(a) [2] might be helpful

((a) Modification.[1] A nonconforming building or structure shall be maintained in such condition as will not constitute a danger to the health, safety, or general welfare of the public.)

([2] A nonconforming building or structure shall not be added to, enlarged, reduced, or altered in any manner in a way which increases its nonconformity. Nothing herein, however, shall prevent the strengthening or increasing of the safety of all or part of a building or structure, provided that the repair or alteration will not increase the nonconformity.)

It was also questioned as to whether Town Code 232-24B (2) (a) [5] should apply.

(Any modification of a nonconforming building or structure is subject to a site plan review and approval by the Planning Board, in accordance with § 232-23.)

Lindsay LeBrecht presented additional information that was sent to the DEC and was missing from the application as well as the requested drawings of the project. There are no comments from abutters.

Mr. Kuester explained that he wanted to use 8'x8' concrete posts to support the new deck in the water. The posts will be about 5' from the low water line to alleviate problems with freezing.

Precast concrete covered with a stone finish will be used to retain the soil. The new deck will be 8'x 26'.

The existing dock gets removed out of the water at the end of the season.

Lakeview Rd. is located 5' at one end and 7' at the other from the proposed new deck.

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

~ Jon Strom indicated that the ZBA had 62 days before rendering a decision, but he believed that the members will be able to make a decision tonight.

Jon Strom 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

Jeffrey Judd disagree with that statement, he voiced that fixing the existing deck with wood would preserve the historic character.

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 .

Taking in consideration that the work will be done very close and in the water.

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.

Tonight the ZBA is voting on an area variance for:

Relief from Article V section P (1) development within 100' of a body of water.

Roll call vote: Frank Peteroy; YES Jeffrey Judd; NO

Jon Strom; YES Michael Diperi; YES

Area Variance is granted

- 2) 2015-07, 167 Golf Course Rd. Tax Map # 165.5-1-14 & 17.
Owner Pritchett /Casey.

Area Variance to build a new home outside the footprint of an existing one, work within 100feet of Copake. Lake.

Marl Rowntree and Julia Sedlock come to the table, they represent the owners.

This is a continuation of a public hearing opened on April 23rd, 2015.

~ Mark Rowntree indicated that the plan was reworked. The house was moved back closer to the lake to take care of the issue with the sewer easement.

Variance requested have therefor changed slightly;

- 1) Rear yard area variance setback of 59' 10".
- 2) A right side yard area variance setback of 1' 4".
- 3) A left side yard area variance setback of 1'.
- 4) Relief from section 232-9 P (1) & (2) Building within 100' of water.
- 5) Relief from the Density Control Schedule for Lot Coverage of 30%.
- 6) A variance of 10' for the driveway

~ Frank asked what kind of finish was planned for the driveway.

~ Rowntree responded that at this point there was no choice made yet.

~ Jon Strom acknowledged the effort made by the applicant to work out the issues and redesign the plans.

DEC is pleased with the location of the screen porch in regards to the wet land.

~ Frank questioned the amount of tree stumps and trees removed as stated on the plan within 100' of the water.

In term of elevation for the house, 35' will be the height. It will be a three story building with a walk out basement and 2 additional floors.

The basement is not counted as a floor because 50% of it is under ground, covered up to 6', exposed only on the east side elevation.

~ Lisa Roberts in the audience asked about the "Rain Garden".

~ Rowntree explained that it is an area where water is directed to and planted with vegetation that does well with excessive amounts of water.

~ Stuart Troyetsky thanked the applicant for working out with the other owners. He wanted to know how much higher the new house will be compared to the existing one.

~ Rowntree and Sedlock responded that it will be 3' higher. They also noted that they were scheduled to meet with the Planning Board next month.

~ David Goldman wanted to know if there was a landscaping plan.

Goldman was told that the Planning Board will look at the landscaping plans.

~ Frank Peteroy asked that because the 2 side yard variances were so minimal was there a way of eliminating them altogether?

~ Rowntree responded that the plan was redesign and everything was pushed as far as it was comfortable.

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

~ Jon Strom indicated that the ZBA had 62 days before rendering a decision, but he believed that the members will be able to make a decision tonight.

Jon Strom 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: YES .

Taking in consideration that the work will be done very close and in the water.

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.

Tonight the ZBA is voting on an area variance for:

- 1) Rear yard area variance setback of 59' 10".
- 2) A right side yard area variance setback of 1' 4".
- 3) A left side yard area variance setback of 1'.
- 4) Relief from section 232-9 P (1) & (2) Building within 100' of water.
- 5) Relief from the Density Control Schedule for Lot Coverage of 30%.
- 6) A variance of 10' for the driveway.

Roll call vote: Frank Peteroy; YES Jeffrey Judd; Abstain

Jon Strom; YES Michael Diperi; YES

Area Variance is granted

3) 2015-08 Mathew Shadic. Pumpkin Hollow Rd. North. 165.-1-3.2.

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

This is a continuation of a public hearing that was open May 28, 2015.

~ Andrew Shadic explained that he has met with John Mezzaros and had an engineer design a drainage plan to handle the water runoff problems.

The plan will slow down the water and prevent erosion.

~ Jon Strom mentioned the letters received from John Mezzaros and from Ellen and Bruce Salkin.

~ A. Shadic noted that every angle has been studied to try to move the house away from the property line with no comfortable result. They can move the whole construction one foot away and will have to build a 48 inches retaining wall. That is the only feasible option for them that will not create a financial hardship, the planned 48" retaining wall will cost \$14,000.00. The variance for the left side needed now would be 24'.

The drainage issue will be managed.

~ John Mezzaros spoke to his concerns that the Shadic's house will tower over his land. He stated that zoning is created to allow people to build a house without having to encroach on the sets back. The Shadic's have a five acre lot and are not metting the sets back.

~ Jeff Nayer speaking as a resident noted that the town should encourage young families to establish themselves in the area. Whether the proposed house has a garage or not it will be visible from the Mezzaros' lot.

~ Robert Piper, A. Shadic future father in law, indicated that he agreed with J. Nayer and that his daughter and Andrew Shadic grew up here in Copake and they are trying their best to work out the details .

~ Jeffrey Judd commented that he cannot understand how on the 5 acres there is no other option.

~ Bob Haight commented as a citizen, that cutting into the hill would not be a satisfactory option. That part of the hill is visible from the road.

~ Frank Peteroy asked to see the architectural plans, from the plans & elevations it looks like the height of the main building is about 25 to 27 feet high, & that the bulk of the building is inside the setback & within the 35 feet limit of code, therefore permitted.

The attached garage is about 15 to 16 feet high within the setback with low impact on the variance.

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

~ Jon Strom indicated that the ZBA had 62 days before rendering a decision, but he believed that the members will be able to make a decision tonight.

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

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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;

The board is taking in consideration all the elements and concluded that the construction will not change the character of the area.

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 ;

Only one variance is requested.

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.

Tonight the ZBA is voting on an area variance for:

A 24foot left side yard area variance.

Roll call vote: Frank Peteroy; YES Jeffrey Judd; NO

Jon Strom; YES Michael Diperi; YES

Area Variance is granted

Jon Strom indicated that there was a last minutes meeting cancelation for 2015-01, 2015-02, 2015-03, 2015-04, owner Alon Ben Meir due to more time needed to do the upgrades on the septic, and other safety code issues. Anyone who has not already spoken is allowed to express themselves tonight.

~ Neil Klein in the audience had some questions for the ZBA.

He wanted a confirmation that a decision on the Ben Meir will have no weight on other properties in the area.

~ Ken Dow emphasized that a decision on Ben Meir will have no precedents on other properties. Every special use permit has to be evaluated individually based on the standards within the code.

~ Mr. Klein also asked if the cease and desist order is enforced.

He was told that the ZBA is not an enforcing agency, Ed Ferrato the code enforcer handles that part.

~ Jarret Shaft asked that since the board has requested Ben Meir to make some upgrades on the homes does that infer that the ZBA has already made a decision on the applications.

~ Jon Strom answered that no decision has been made, however compliance to requests by the ZBA is looked upon as a positive.

~ Jim Kurbin indicated that he came from Virginia to attend this meeting and was wondering if the applicant can be held in contempt of the ZBA and the special use permits denied.

~ Ken Dow explained that ZBA confine itself to the applications presented. Alleged behavior cannot be taken in consideration to make a decision. The substance of the application, public comments and the impact on the surrounding areas are elements that the ZBA use to base their decision for granting or not special use permits or variances.

~ Liz Siber commented that trash is still showing up in the pond.

- ~ Jarret Shaft discussed the issue of enforcement. How can the ZBA take an applicant's word that they will comply with requirements?
A lengthy discussion went on with regards to violations, code enforcement and the issuance of special use permits.
- ~ Rochelle Eldenson handed out a map of Rhoda Pond, indicating the properties that were affected by the activities going on at the Ben Meirs.
- ~ Lindsay LeBreck is still struggling with the idea of the impact of a refusal of special use permits on other properties around.

Internal business:

~ Jon Strom spoke about training for board members and the advantage to do that here in Copake, however he supports the request by one member to train at a different location and he hopes to get the support of the town board.

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

The meeting was adjourned at 8:55

Next meeting July 23, 2015

Respectfully submitted.
Veronique Fabio
Recording Secretary.

