

**Town of Copake  
Zoning Board of Appeals  
Minutes-June 28, 2012**

Please note that the referenced letters on page 3 and 5 are on file with the Copake Town Clerk and in the Zoning Board of Appeals office.

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on Thursday, June 28, 2012, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman Frank Peteroy at 7:10 PM.

Present at this meeting were: Frank Peteroy, Michael DiPeri, Emilee Drobbin, and Jon Strom.

Hilary L. Thomas and Glen Schermerhorn were absent.

An audience of about 22 were present including Kenneth Dow, Copake Town Attorney, Jeff Nayer, Town Supervisor, and Edward Ferrato, ZEO.

**Minutes:**

Frank called for the April minutes and noted that there were unsolved issues. He requested to waive the minutes' reading of May 24, 2012.

*Frank asked for a motion, Emilee made the motion, Michael seconded, motion carried unanimously.*

**Correspondence:**

Frank noted that the following correspondence would be attached to Robert Kitchen's file:

1. Letter from the Planning Board, dated 6/9/12; Use variance for Pigasso Farm.
2. Letter from Attorney, Kenneth Dow, dated 6/14/12; Pigasso Farm.

**Closed Public Hearing:**

None

**Public Hearing:**

1. Application # 2012 09 Robert Kitchen, 480 Farm Road, Copake, Area and Use variance requested for processing poultry

Robert Kitchen approached the table and distributed a packet to the ZBA members. Frank asked Robert to explain its contents. Robert explained that the packet answered the queries posed by the ZBA regarding the hardship he presently endures by not being able to process his own birds on his property. It also addressed the issues of cleanliness.

Furthermore, he included photos depicting different scenarios of the exterior and interior appearance of tractor trailers, which provided a comprehensive view of how the processing facility would look like and operate.

Robert provided a detailed breakdown of the cost to raise a bird; highlighted that he presently pays a processing fee of \$6.00 per bird. He remarked that if he was able to process his own birds, the cost would be \$2.50 a bird. A total saving of \$9,000 yearly. Consequently, with the extra surplus, he could do other enhancements on the premises.

Frank asked: how is labor different from processing?

Robert responded: labor is cleaning, feeding and dragging water to the birds. Processing is what he pays someone else to process the birds.

Every 2 weeks, Robert gets 200 day old chicks. He processes 100 weekly. The 1<sup>st</sup> chicks arrive on March 31. They get processed at the end of May. The processing starts from May until Thanksgiving. If he was allowed to process the birds on his property, the facility would only run on Wednesday. It would run for (4) hours. It would generate (1) 30 gallon garbage can per week, consisting of feet, heads, insides, feathers and blood. The garbage would be collected by Barbato.

Frank asked: out of 100 chickens, how many chickens do you presently sell on the farm?

Robert responded: 25. The rest is sold to restaurants. He noted that although he could do 1,000 birds without any permits or regulations from any states, he would only be able to sell them at his farm or at the Farmer's Market; but by applying for a 5-A permit from the Ag. & Market, with the USDA label, he would be able to sell his poultry to retailers, other institutions, restaurants and grocery stores anywhere in NYS.

He stated that Ag. & Market would inspect the site, weekly and monthly, and perform a thorough check-up on cleanliness.

Frank asked Robert to explain the trailer photos.

Robert responded that this was his 1<sup>st</sup> choice for a processing facility. "It is the least capital. The cost to build a new building will run approximately \$10,000. just to get started."

He explained how easy it would be to convert a tractor trailer into a processing facility. The trailer would be fitted with doors, windows, vinyl siding, vinyl walling, flooring, drainage, hoses, electro hook ups, propane, killing cones, plucking machines etc. The interior could be hosed down completely. Thus, making the facility a very sanitary environment.

Emilee expressed concerns about the waste water that would wash down the stream.

Robert indicated that it would be collected into a 600 gallon tank located under the trailer, pumped out and disposed of. A septic company would come and haul it away.

Robert indicated that the store blocked most of the area in discussion, and at the other side, only 3 ft. of the tractor trailer would be exposed from the bunk site. He proposed planting trees along the site to block its view from the road and for aesthetic purposes, he would paint the trailer to blend with the terrain.

Michael asked: how would the open area be shield from the street?

Robert proposed to install (2) 12 ft. metal gates on wheels, attached to a stock aid fence for stability. The gate will open/close and roll on the concrete path.

Frank expressed concerns regarding the proximity to other properties. When he visited the site, he took measurements and noted that Robert was approx. 500 ft. from the barn, to the center of where he wants to put the processing facility, from the center of the private white house. According to Ag. & Market, he should be 1,500 ft.

Robert remarked that he shared the same concern thus, contacted Clarence, head of the Poultry Dept. at Ag. & Market.

Mr. Clarence indicated that the restrictions would be applicable in a population of 1 million people.

Frank remarked that he had not seen that in the memo, but would check and address at the next meeting.

Jon remarked that a verbal statement will not suffice, the ZBA would require a written confirmation.

Jon addressed the issue of the trailer being moved from its location to another, based on Robert's comment, that the trailer could be moved to a different location. Jon remarked: "If it is a trailer, unless we are there at all times, we wouldn't know exactly its location. It could be right next to the road or very close to another house."

Robert clarified Jon's query. The trailer would have a fix location. It would be located on the concrete area of the bunk site of the road. In the event ZBA did not want the trailer to sit in the same place, at all times, he would move it somewhere, but it would have to come back every week to the bunk site."

Frank read Mr. Weir Stewart Jr. e-mail, dated 6/28/12. (Copy attached elsewhere herein)

Frank remarked that the goal is thriving farms, when the Comprehensive Plan in the Town of Copake, was written, back in the 1970's it did not include the processing aspect. The general conception was what we see nowadays: vegetables, cattle, dairy farms. He added slaughtering has been prohibitive since 1972.

Frank asked Robert if he knew about other operations similar to his in Columbia County, which would fall under this format.

Robert responded he did, the only difference was, that these people sold less than 1,000. birds at their farms or at the Farmer's Market and they were not applying for a 5-A permit.

Emilee asked about the permit -limit being sought from Ag. & Market, and the growth of the business. Robert indicated that he was seeking a permit from Ag. & Market for a limit of 3,000. (application is for 2,600 at 100 birds per week maximum; part of the year). He couldn't go higher than that, because of the space/size of the property. Presently, whatever he does not sell, is donated to The Salvation Army and food pantries.

Ken clarified various points regarding the application, and although most of the statutory factors have been addressed:

- a) Uniqueness of hardship
- b) Creation of crops, self created-or not.

The following factor has not been demonstrated.

Ken read: "The applicant should demonstrate to the Board of Appeals, that for each and every permitted use under the Zoning Regulations, for the particular district where the property is located, the applicant cannot realize a reasonable return."

Robert requested clarification.

Ken remarked that Robert needed to look at the Zoning Code in his district. He had to find out what are the uses that are permitted uses on his property, once the criteria was met, Robert would have to itemize them and show that he, *the applicant*, could not pursue any of them and make a reasonable return.

The hearing was open to the public when Jeff requested permission to speak, once granted, he stated, that “as a citizen and tax payer in the Town of Copake, our ultimate goal is to encourage farming, we must help farmers and promote farming, regardless of what the Comprehensive Plan intended in this matter.” He found Mr. Stewart’s remarks to be “very out of text.” Several people in the audience expressed similar views.

Nonetheless, Jon asked to address Jeff’s personal opinion. Jon indicated that “in the code, it says everything about farming, except slaughterhouses. It is explicitly stated by the community, that we want to encourage farming, but slaughterhouses are forbidden.”

Jeff rebutted by stating: “I understand the code, but a person comes to you requesting a use variance. They are asking you to break the rules, and let them complete what they want to do. It is up to the ZBA to make the final decision, I simply expressed my opinion.”

Frank remarked that NYS has designated almost 80% of Columbia County, as agricultural, and that they promote all aspects of agriculture, whether a small processing facility fits that concept, is something to look into.

A lengthy discussion followed amongst the ZBA members, the applicant and audience.

In addition, the abutters present: Alice Gorayeb and Eleanor Sabbagh,(8323 Rt.22); Barbara Macksoud and brother, Philip Macksoud, (462 Farm Rd.); Darin Johnson(8368 St. Rt.22); and Andrew Bart, (570 Overlook Rd.) expressed concerns over the following issues:

Noise, odors, waste, predators (coyotes), impact on the value of their property, aesthetic, private enjoyment of their property being compromised, other sites to be considered, preference for a permanent structure, in lieu of a tractor trailer and whether the applicant could increase the limit in regards to this variance, at a later than.

Frank addressed this last concern. He explained that conditions are applied to variances, unequivocal conditions, if the variance is granted and the applicant wants to change it, he/she loses it. The contract would be void and null.

Subsequently, Darin Johnson indicated that he and his partner, Greg Keffer, are supportive of agriculture and farming. They favored a permanent building structure, in lieu of a tractor trailer. He stated “people are investing and making their property nicer. Farm Road is one of the main corridors in Copake and a tractor trailer is not aesthetic.” If our concerns can be addressed in a way, they would not be so strongly opposed to the variance.”

Marcia Becker indicated that the Planning Board did not comment on the area variance. It would be forthcoming.

Frank asked if there were any other questions, with none, this public hearing came to a close. Frank concluded that the ZBA members would review the information presented and propose to keep the hearing open until next month.

*Emilee motion to keep the hearing open, Michael seconded, motion carried unanimously.*

Afterwards, Alice Gorayeb and Barbara Macksoud approached the table and expressed their desire to be kept abreast on ongoing decisions in this case. Frank agreed.

All correspondence to them should be mailed to their respective P.O. boxes.  
Alice Gorayeb: P.O. Box 115, Hillsdale, NY 12529  
Barbara Macksoud: P.O. Box 422, Hillsdale, NY 12529

**Public Hearing**

**2. Application #2012-07 Nielsen, Southwest Colony Drive, Copake Lake, West Copake. Install patio and steps within 60 feet of the lake.**

Ms. Nielsen approached the table. Frank asked if there was anything she would like to present to the board. Ms. Nielsen requested permission to read her letter, as outlined below:

*(letter on file).*

At the conclusion of the reading, the board requested clarification on various issues. The following remarks are noted:

- a. Ms. Nielsen confirmed that she had instructed Jake, liaison contractor at 'A Plus Landscaping', improperly. She took full responsibility for the lack or miscommunication on the matter. Thus, no refund from the landscaping company would be forthcoming. She indicated that the total cost for the project was over \$20,000. but did not know the exact cost for the 2<sup>nd</sup> patio.
- b. A feeling of deceit and deception was clearly felt in the room when Mr. Melnyk, one of the abutters, (SW Colony Rd. Copake), stated that the 2<sup>nd</sup> patio had been built 1<sup>st</sup>. This caused an uproar. It had been noted, in previous meetings, that the 2<sup>nd</sup> patio was built from extra bricks which had been left behind.

Consequently:

1. ZBA members, Ken, Jeff and several abutters, amongst them: Robert Piper (County Rt.7);Michael Melnyk; Larry Mercilliot, (33298 Rt.7); engaged in heated discussions over the issuance of a variance granted to the applicant, whereby conditions were explicitly written, and agreed upon voluntarily by all parties, but the applicant failed to comply with or adhere to the terms.
  2. Ms. Nielsen admitted that the 2<sup>nd</sup> patio had been built 1<sup>st</sup>.
  3. Frank remarked that the Town of Copake, Zoning Board and the DEC had issued a permit clearly outlining what had to be done. "It seems to me that the contractor treated the process with contempt. You changed and build more than you needed to."
  4. Michael remarked on Ms. Nielsen's total disregard for the agreement granted to her. Furthermore argued, " with the sensitivity of what you had to go through to get the permit for the patio, for you not to even supervise or see what the landscaper was doing. It just doesn't make sense to me."
- c. Ms. Nielsen stated that the lower patio was mostly used for entertainment. The upper patio was used for dining. Emilee asked: could you still dine and entertain on the upper patio? Ms. Nielsen responded: Yes.
    1. Jon concluded that the benefits and uses would still be there, without the 2<sup>nd</sup> patio.

Frank asked if there were any further comments from the audience or anyone?

Jon asked the board to consider and address accordingly, the type of message being sent to the community, "If someone wontedly disregards our instructions, then comes back and says, please let me do this. This would be a precedent, probably not good for the community."  
Frank replied: "Good point."

Frank asked to conclude the meeting. He asked the ZBA whether they were prepared to vote on this issue tonight or wait the 62 days, as allowed by law? The ZBA members had conflicting views. A sense of uncertainty prevailed amongst the members. Internal discussions were carried on by the members.

*Michael made a motion to close the public hearing. Frank's recollection, he had a simultaneous second to the motion to close, motion carried unanimously.*

Hearing was closed. Frank stated to Ms. Nielsen that she had a week or so to furnish the ZBA with the cost to remove the 2<sup>nd</sup> patio,

#### New Business:

1. \* Application #2012-09 Thomas Foley, 110 North Mountain Road, Copake Falls, Area Variance, Erect Garage

Frank explained that Mr. Foley presented the ZBA with a package a few days ago for an area variance to replace an existing garage, Unfortunately, Mr. Foley missed the 10 day window allowed. An application had not been completed. Frank told Marcia that he would do so and forward accordingly. Marcia noted that the applicant required a site plan. Frank agreed to call upon Mr. Foley during the week.

Frank was accepting an application for next month.

*Emilee asked for a motion to accept the application. Michael made a motion, Jon seconded, motion carried unanimously.*

\*Mr. Foley's applicant was withdrawn after the Building Department reconsidered.

#### Old Business

None

Thereafter, internal discussions were carried on by the board and Ken.

#### Adjournment

*Jon made the motion to adjourn this meeting, Emilee seconded, motion carried unanimously.*

Meeting was adjourned at 9:00pm.

The next meeting will be held on July 26, 2012

Respectfully submitted.

Yvonne Acevedo

Recording Secretary-substitute