

**Town of Copake  
Zoning Board of Appeals  
Minutes-August 23, 2012**

**Revised 9-12-12**

**Please note that the referenced Memorandum of Decision, comprising 8 pages, is 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, August 23, 2012, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman Frank Peteroy at 7:07 PM.**

**Present at this meeting were: Frank E. Peteroy, Michael DiPeri , Emilee Drobbin, Jon Strom, Glen Schermerhorn and Kenneth Dow , Copake Town Attorney. Hillarie Thomas was not present at roll call and arrived late.**

**An audience of about 15 was present including Jeanne Mettler, Town Board Liaison and Edward Ferrato, ZEO.**

**Minutes:**

**Frank called for the revised July minutes to be accepted He requested to waive the minutes' reading. Frank noted that the April minutes are still open.**

*Frank asked for a motion to accept the July minutes, Emilee made the motion, motion carried unanimously.*

**Correspondence:**

**Frank noted that the following correspondence would be reviewed during the respective public hearings;**

**8-14-2012-----Email from Barbara & Philip Macksoud in  
Ref. to Mr. Kitchen's application 2012-09.**

**8-8-2012 ----- Planning Board message in Ref. to application**

**2012-10 Lucas Bliss.**

**Frank stated that he will read the following correspondence and address it at a later time.**

**8-15-2012-----US Army Corps of Engineers, Ref. to Camphill Village Water main  
Improvements.**

**8-17-2012-----Notification of public hearing for Global Tower Partners for  
Telecommunications Tower.**

**8-20-2012-----letter from Lisa Nielsen to ZBA members.**

**Frank also noted the hearing for Nielsen, application # 2012-07 was closed and that the letter from Mrs. Nielsen will be filed.**

**8-21-2012-----Email to ZBA from Tom Phillips, Phillips Construction Corp.**

**Mr. Phillips with a request to be placed on the agenda will be able to hand out his application tonight.**

**Closed Public Hearing:**

**Application 2012-07, Lisa Nilesen to be voted on this evening.**

**Frank reminded the board of the approved variance granted 8/28/2011.**

*1- Variance requested for 60' from Copake Lake, 40' closer than the 100' usually allowed.*

*2- Open terrace of 20'x 20' with a walkway.*

*3- Both sides of easements are to be protected.*

*4- Retaining wall is not to be higher than patio.*

*5- Silt fence during excavation is required per DEC.*

*6- Any tent, canopy or temporary structure has to come down at the end of the season.*

*Variance approved for a 20x20 patio located no closer than 60' from Copake lake, Patio and Walkway located so that both sides easements are protected.*

**Frank reargued that a series of violations followed that approved variance.**

**Frank asked if anyone had a question.**

**He read the 5 items of discussion, parts of Kenneth Dow's (Copake Town Attorney) Memorandum of Decision;**

**General Description:** Application for variance to permit a 15' x 15' patio that extends 55 feet into a 100' shoreline setback. Patio has already been constructed by applicant in direct violation of a prior 2011 variance that permitted a 20' x' 20 foot patio extending 40 feet into the shoreline setback, which has also been constructed.

**Statutory Factors**

(1) Would an undesirable change be produced in the character of the neighborhood, or a detriment to nearby properties be created?? **NO.**

**Frank asked if Board Members agreed to that statement, members agreed.**

(2) Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?

The answer to that question is unclear because it is a second patio that was built before the first patio was approved.

(3) Is the requested area variance substantial? **YES.**

(4) Would the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? **NOT SUBSTANTIAL.**

(5) Is the alleged difficulty self-created? **YES.**

The need for this variance arises from applicant's construction of the 15' x 15' foot patio in direct violation of the prior 2011 variance. There has been extensive oral and written testimony regarding the construction of the patio, including acknowledgement by the applicant that the patio in question is in violation of the earlier variance. The documentation related to the prior variance is also referred to.

Frank pointed out that the easements were also consistently violated. . There are two easements. Easements were blocked at time and then open again, subsequently blocked again with some sort of fence.

Ken Dow pointed out that the vote of the board is made adopting in full the memorandum. It reflects the views of the board members.

The entire memorandum constitutes the decision by the board. There is an extensive documentation for each of the points that supports the decision of the board.

The 5 factors mentioned tonight are incorporated in the final balancing test; the benefit to the applicant against the detriment to neighbors. The board found that some of the factors weighed more heavily in the decision than others, the substantiality of it, given the location near the shore of a public lake. The self imposed aspect weighs heavily as well. One of the key factors also is the lack of credibility on the applicant's part as the public hearings unfolded.

Another completely separate bases in the decision by the board to deny this application is the statutory requirement that the board grants the minimum variance necessary to met the applicant's needs . A variance was granted on 8/28/11 for a 20x20 patio at the request of the applicant, it was never claimed by the applicant that another patio was necessary and in fact the second 15x15 patio was stated as being accidental. Without any showing by the applicant for a need for further expansion the board is statutory bound not to grant a greater variance than what was needed.

*Jon made the motion to adopt the memorandum as constituting the statement of decision of the board, , Emilee seconded, motion carried unanimously.*

*Frank asked for a roll call of vote: Jon;No ,Hilarie:No, Frank;No, Emilee;No, Michael;No.*

**The application for the area variance is DENIED.**

Hilarie asked if dismantling of the 15x15 patio was going to be added to the decision.

Frank responded that yes, the removal of the patio is part of the decision.

Mr. Ferrato ZEO will sent a letter to Nielsen

Frank detailed; Removal of the pavers and clearing the easements of any blockades.

The neighbors can pursue the easement issue in civil court.

Ken Dow reiterated that the easement problem is a civil and private matter.

### **Public Hearing:**

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

**Hilarie recused herself.**

**Robert Kitchen approached the table and stated that his accountant did not provide him with the income tax required by the board at the last meeting. He handed out documents for his income from 2008 to 2011 including a schedule C with profit and loss.**

**Frank asked if anyone had question.**

**Frank noted some inconsistencies on the documents regarding the animal feed.**

**Mr. Kitchen explained that this was Quick Books system that did not allow him to differentiate hog feed from chicken feed.**

**Frank feels it is a misrepresentation of the actual expenses for feed. The total feed can not be called chicken feed when it includes hog fee as well.**

**The automobile expenses as well are not accurately listed on the forms presented. .**

**The total income is shown as a negative income**

**Frank would like to see numbers that make sense, Mr. Kitchen is going to ask again to his accountant for detailed income tax documents.**

**Frank stated that it is important for the board to be able to review income tax forms in order to properly address the need for a variance.**

**Frank reviewed the “bunker” area and stated that there is only 92Inches available for the buffer.**

**Frank suggested a concrete retaining wall on the east side.**

**Mr. Kitchen has in mind cement blocks.**

**Frank emphasized that the outside of the processing facility should be as clean as the inside nothing should be stored around the trailer. The cleanliness of the outside affects the neighbors.**

**Cleanliness in this type of operation is paramount. The choice of vegetation for buffer is Mr. Kitchen’s decision.**

**Frank visualizes a ramp at the south end of the trailer for access and a deck at the opposite end where the pails could be rinsed out and dried. Frank feels that 30 to 40 gallons pails lined with heavy gauge plastic bags would be more adequate than a dumpster to dispose of the wastes.**

**Mr. Kitchen questioned the idea, noting that most restaurants use dumpsters.**

**Mr. Kitchen stated that his intention was to use roll out pails, the bags inside will get picked up the day after processing; the pails would then be washed and dried.**

**Frank would like to see a sort of shower pan on the deck where the pails can be rinsed out and the water collected in a container below.**

**Frank asked for a sketch to clarify the details.**

**Mr. Kitchen noted that he had planned 6x6 decking for the access stairs to the trailer.**

**Jon asked if the last letter from the Macksouds should be read and if we could get a tally of the abutters that support or not the proposal.**

**Frank read the letter;**

**From:** [BMacksoud@cs.com](mailto:BMacksoud@cs.com) [mailto:BMacksoud@cs.com]

**Sent:** Thursday, July 19, 2012 9:08 PM

**To:** [townofcopake@taconic.net](mailto:townofcopake@taconic.net)

**Subject:** Mr. Frank Peteroy - Mr. Kitchens request for a variance

July 19, 2012

Mr. Frank Peteroy  
Zoning Board Chair

The purpose of this email is, to confirm in writing our objection to grant Mr. Kitchen a variance to expand his farm to include the processing of chicken and turkeys.

As stated, at the Zoning meeting on June 28th, the law in Copake does not permit slaughter facilities.

The approval of

Mr. Kitchen's application would make it possible for others to make the same request, basically altering the law that does not permit slaughtering facilities now.

We've owned our home at 462 Farm Rd. for 19 years and bought in Columbia County because of the serenity of the rolling hills and farm lands. We support local farmers - especially the small ones like Mr. Kitchens - any way we can. There is no question that farming is a tremendous amount of work and farmers should be commended for their dedication and devotion.

The Pigesso farm - on a small 8 acre parcel at the corner of Farm Rd. and Rt. 22 - has continued to grow recently adding a farm stand. We wish Mr. Kitchen the best but we feel that there is a lot going on already and the addition of a processing facility with all the issues associated with processing would not be appropriate at that location.

Again, the law does not permit this. Once again we reiterate that Mr. Kitchens application for a variance be denied.

Respectfully submitted,

Barbara Macksoud and Philip Macksoud

**Frank asked if anyone had questions.**

**Frank recapped the documents requested; CPA statements for 2011.**

**Mr. Kitchen pointed out that at the last meeting the members' suggestions for other type of activities in order to supplement his income were not feasible. He explained that his fields flood and growing vegetables was not an option, nor was growing corn on 21 acres, nor was boarding horses as that would create a large expense in order to build the right accommodations and barns.**

**Jon is going back to the income tax return and noted that the income shows \$73,294 and expenses \$72,000; the profit shown is \$1,000, even if Mr. Kitchen process his own chickens it does not seem it would be profitable. Are the figures for expenses erroneous?**

**Mr. Kitchen explained further that he had a lot of expenses that year because of improvements.**

**Board members emphasized a need for true financial statements.**

**Frank asked if any one had questions or comments.**

**Public Hearing is still open, Mr. Kitchen will come back 9/27/2012.**

**2 Application #2012-10. Lucas Bliss, Cat Track Road on Chrysler Pond. Tax Map # 186-1-73. Area variance.**

**Hilarie Thomas comes back to the table.**

**Mr. Bliss approaches the table.**

**Frank asks Mr. Bliss who long has he own the property?**

**Mr. Bliss responded that he took possession December 2011.**

**Frank pointed out that the structure is regarded as an accessory building not a shed because there is no other structure on the lot. The structure will be over 120 square feet. A shed does not require to be tied to the ground and in this case the board would like the structure to be anchored with some type of device.**

**Frank mentioned a type of spiral anchor, he also noted that the area is subject to tornadoes and high winds.**

**Mr. Bliss asked if 4x4 posts with poured concrete would be acceptable, Frank responded it would be.**

**Frank asked if anyone had questions.**

**Frank asked for a motion to grant the variance, Michael made the motion, Hilarie seconded, motion carried unanimously.**

**Variance is granted.**

6. New Business:

New Applications:

1 Anne Captain, Tax map 165-14-2-64-200 , 637 SW Colony Rd. Hillsdale NY.  
Area Variance for garage and master Bedroom addition.

*Linda* Chernewsky from Morris Associates represents *Anne* Captain, they both came up to the table to present the application.

*Linda* stated that Mrs. Captain wants to build an addition to her modular home with a bedroom over a garage. The existing house is 30 feet from the property line; a variance is needed because the addition will also be 30 feet from the property line. Property is zoned R2. Distance of the house from the back property line is 150 Feet and 46 Feet for the side line.

*Linda* explained the location for the garage where the land slopes.

*Hillarie* asked if the chimney shown is for a fire place. *Anne* Captain responded it was the exhaust for the furnace.

*Jon* asked about the location of the planned garage, *Linda* Chernewsky showed the plans.

Mrs. Captain paid the \$100.00 fee.

*Frank* asked for a motion to accept the application and schedule a public hearing for next month, *Hillarie* made the motion, *Jon* seconded, motion carried unanimously

2 Robert & Jacqueline Beatty, Tax Map 176-01-03-51 , 1182 Lakeview Rd. Copake.  
Area Variance for New deck, screen porch, windows, roof & garage doors.

*Linda* Chernewsky from Morris Associates represents *Robert Beatty*, they both came up to the table to present the application.

*Mr. Beatty* wants to update his house with new siding, roof and windows. Also the project consist of a screen porch and deck following the original foot print, a covered porch between the garage and entrance of the house as well as replacing rotten steps made with railroad ties that are going down to the lake. *Linda* Stated that the distance of proposed steps from the lake will be shorter than what it is now.

Septic system and sewer line have been updated by Baldwin & Sons Inc. on 5/02/2012.

An application has been submitted with Taconic Shores Association. *Linda* is waiting for a date for a meeting.

*Linda* has a letter from the DEC, she also spoke to *Mike Higgins* who indicated that he did not foresee any problem with the project, the grounds had been disturbed already when the original deck was built. She handed out a copy of the letter to the board.

There will be a 5 Foot difference from the existing stairs.

The 100 feet set back from the lake cannot be met therefore a variance is requested.

*Frank* asked for a motion to accept the application and schedule a public hearing for next month, *Hillarie* made the motion, *Michael* seconded, motion carried unanimously.

*Mr. Beatty* paid the \$100.00 fee.

3 Robert & Corinne Gursky, Tax Map # 165. 14-02-57 , 602 SW Colony Rd.  
Hillsdale NY.

Area Variance for construction of a new house while present residence still standing. Existing house will be removed upon completion of new one.

Linda Chernewsky from Morris Associates represents Joseph & Corinne Gursky, they both came up to the table to present the application.

Frank asked when the house was originally built. Mr. Gursky answered 1920's.

Linda presented the project. The existing house needs a new foundation; it is in such disrepair that building a new house is more adequate.

A survey has been done by Mr. Plass, Land Surveyor.

The existing home will be taken down when the new one is completed.

The lot is pie shaped and set backs cannot be met, a variance is requested for the relief from the 75 feet rear set back to a 58 feet rear set back.

Frank asked what guaranty the board has that the old home will be taken down?

Mr. Gursky noted that the entrance to his future new garage will be blocked by the old house and the old house will have to be torn down in order to enter the garage.

Mr. Gursky indicated that he had an estimate for the removal of the existing house from Barbado in Hillsdale and was hoping to be finished with the new construction in January 2013.

Frank proposed to put money in escrow until the old house is down.

Hillarie suggested that the destruction of the house could be a condition for obtaining a C of O.

Frank asked if anyone had questions.

Jon asked Mr. Gursky if this was his permanent residence. Mr. Gursky answered it was.

**Frank asked for a motion to accept the application and schedule a public hearing for next month. Jon made the motion, Michael seconded, motion carried unanimously.**

Mr. Gursky paid the \$100.00.

#### **New Business:**

Linda Chernewsky and Ed Ferrato approached Frank to discuss a property on Copake Lake that belongs to Jim Wagner and is 50 x 142.03.

Linda was not certain that the matter should be presented to the ZBA or to the Planning Board. The owner of the property wants to replace the house that is in poor condition. The foundation is in disarray. The house now is 26 x 36 with a wrap around deck that sits 10 feet away from the shore line. The septic is up on the golf course. Mr. Wagner would like to rebuild on the same exact foot print.

Ed Ferrato thinks that Mr. Wagner has the right to rebuild on the same foot print, but should see the planning board. He pointed out from the Zoning book page 232:84, paragraph 232-24 b.

Providing that the new building is not higher than the existing one a variance is not necessary.

Linda handed out plans to Frank to review.

**Informal presentation of a project for Edward Leuschher, Tax Map # 176.3-1-3, Lots 361 & 362, 20 Mansion Dr. Copake. Modular construction on a vacant property. Area variance requested for set back that cannot be met.**

Mr. Phillips from Phillips Construction came to the table, he represents Mr. Leuschner.

Jon pointed out that the 10 days dead line was missed by this applicant.

Mr. Phillips explains that a variance is requested for a new construction on an under sized lot. The proposal is for a 3 bedroom house with garage attached.

Columbia County BOH did Percolation tests.

On the site plan, the proposed area for the septic is farther than the required 100 feet set back from the lake. The house itself will be 150 feet from the lake, side set backs are respectively 22feet

and 21 feet. Set back variances are requested. Adjoining properties are very close to the Leuschner's property line. There is no well on the property; water is provided by Taconic Shores. An application was submitted to the Taconic Shores Owners Association. Mr. Phillip paid the \$100.00 fee. The application is not complete; Mr. Phillips was given the list of documents necessary. Complete application will have to be submitted September 27.

**Old Business**

None

**Adjournment**

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*Michael made the motion to adjourn this meeting, Hillarie seconded, motion carried unanimously*

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**Meeting was adjourned at 8:30 PM**

**The next meeting will be held on September 27, 2012**

**Respectfully submitted.  
Veronique Fabio  
Recording Secretary**

**More next page**

8/25/ out @  
12:00

**Memorandum of Decision**

**Copake Zoning Board of Appeals**

**Date:** August 23, 2012  
**Applicant:** Nielsen  
**Matter:** Area Variance (#2) for patio

**General Description:** Application for variance to permit a 15' x 15' patio that extends 55 feet into a 100' shoreline setback. Patio has already been constructed by applicant in direct violation of a prior 2011 variance that permitted a 20' x' 20 foot patio extending 40 feet into the shoreline setback, which has also been constructed.

**I. SUMMARY**

**Statutory Factors**

(1) Would an undesirable change be produced in the character of the neighborhood, or a detriment to nearby properties be created?? NO.

**Relevant evidence:** The impact of the extended patio, while substantially encroaching upon the waterfront setback requirement, is not so great, in the board's view, as to create a change in the character of the neighborhood. In addition, other properties in the area are used in ways that are similar in character. The nature of this project and its uses are not such as would create a significant detriment to nearby properties.

(2) Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? **UNCLEAR.** If the benefit sought is a patio that gets close to the water's edge, then no. If the benefit sought is a larger patio, the record does not show whether or not expansion in a different direction or location is possible. It appears that the real benefit sought by the applicant is avoidance of consequences for impermissibly violating the zoning code and agreed-to provisions of a prior variance.

**Relevant evidence:** The "benefit sought" has not been clearly articulated. The applicant does not claim to be seeking a variance to satisfy a desire for a larger patio or one closer to the water. In fact, the applicant has specifically claimed that the patio was accidentally made too large and in an impermissible location. Inconsistent testimony and statements by the applicant that the board finds to be not credible lead to a conclusion that the applicant knowingly and intentionally overbuilt subsequent to receiving the earlier variance.

(3) Is the requested area variance substantial? **YES.**

**Relevant evidence:** Copake Code section 232-9(F). "No development shall be permitted closer than 100 feet to a stream, creek, wetland or other body of water." Section 232-3, definition of "Development" includes "any man-made change to improved or unimproved real estate..." The relevant shoreline setback under the zoning code is 100 feet; granting this variance would result in construction to