

Town of Copake Zoning Board of Appeals

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Meeting Minutes of September 25, 2014

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on September 25, 2014, at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

An audience of about 15 was present as well as,

Edward Ferrato: Building Department,

Susan Sweeney: Town Board Liaison,

Bob Haight: Planning Board.

Jeff Nayer : Town Supervisor.

The meeting was called to order by Hilarie Thomas at 7:10 PM.

Roll call:

Present at this meeting were: Frank E. Peteroy, Hilarie Thomas, Michael DiPeri, Jon Strom and Adam Resnikoff.

Kenneth Dow: Copake Town Attorney was also present.

Veronique Fabio was present to record the minutes.

Reading and approval of the minutes of preceding meeting:

Hilarie Thomas asked for a motion to waive the reading of the August 28, 2014 minutes and approve them.

Frank Peteroy indicated that some corrections were needed and since the minutes had not yet been updated the approval will have to wait until the next meeting.

Correspondence:

9-6-14 From Stosh Gansowski in ref. to not filling vacancy.

~ Hilarie indicated to the public that the town was actively looking to fill the vacant position as a ZBA member.

9-11-14 From Planning Board Resolution for BMC.

~ Hilarie noted that the Planning Board had granted provisional approval for the project, subject to a list of conditions .

9-15-14 From Planning Board in ref to Chadkin.

9-16-14 From David Silver letter dated 8-4-14 sent again in ref. to BMC project.
9-16-14 From Planning Board to David Silver.
9-17-14 From Brad Sherwood US Army Corps of Engineers to Prendergast.
9-17-14 Response from Prendergast to Brad Sherwood.
9-25-14 From Andrew Gilchrist to ZBA in ref. to BMC.

Closed Public Hearing:

None

Public Hearing:

- 1) **2014-10, Chadkin**, 421 Lakeview Rd. Area variance for 10 x 12 storage shed.
Tax Map #165.1-11-1-7

Hilarie Thomas asked for a motion to open the public hearing. Michael Diperi made the motion, Frank Peteroy seconded, all in favor.

Mr. and Mrs. Jason Chadkin came to the table to present the project.

~ Hilarie noted that all the abutters had been contacted.

~ Hilarie read the planning board memo;

October 27, 2014 To: Hilarie Thomas, Chair, ZBA

From: Bob Haight, Chair, Planning Board

Re: Jason A. Susan Chadkin

Project Location: Lakeview Road, Copake Lake

At the September 4, 2014 Planning Board meeting the members reviewed the application for the addition of a shed on Mr. Chadkin's property. The only concerns the Board had were whether the lot coverage was more than twenty-five percent (25%) of the property and whether the placement of the shed will obstruct the view of any of Mr. Chadkin's neighbors. It was noted by the Board that there are a total of three (3) lots and lot coverage would not be an issue if these were combined.

~ Mr. Chadkin confirmed that he had 3 lots, 2 on the water front and the 3rd on the other side of the road.

~ Jon Strom indicated that the lot coverage is currently 22%.

~ Hilarie asked about the possible view obstruction. Mr. Chadkin described the location of the houses surrounding his property and indicated that the shed will not be in any of his neighbors view.

~ Jon Strom asked if there were any comments from abutters.

~ Hilarie asked if anyone in the audience had comments or questions, being none;

Hilarie Thomas asked for a motion to close the public hearing. Jon Strom made the motion, Michael DiPeri seconded, all in favor.

~ Hilarie indicated that the ZBA has 62 days before rendering a decision, but she believed that the members will be able to make a decision tonight.

Hilarie 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

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.

The board tonight will vote on;

- 1) Relief from section 232-8D (4). Installation of a storage shed.
- 2) A rear yard variance of 8 feet.
- 3) A side yard variance of 8 feet.

For the purpose of installing a 10' x 12' prefabricated storage shed.

Roll call vote: Frank Peteroy, YES.
Hilarie Thomas, YES.
Michael DiPeri, YES.
Jon Strom, YES.
Variance granted.

New Application:

- 1) **2014-11, Fournier**, 8 Snyder Pound Rd. Tax Map # 186.2-10.

Area variance for roof over 10x10 porch.

Mr. and Mrs. Fournier come to the table.

~ Jon asked about the project already built. How did the applicant find out that a building permit was needed?

~ Mrs. Fournier responded that Ed. Ferrato; Building Inspector, informed them of the necessity of a permit to construct a roof over a deck.

~ Hilarie noted the Building Department memo.

This project is in an R-1 District

The Applicant needs relief from section 232-24 B (2)(a) [2]. And [5].

The Applicant will need relief from the density control schedule.

A Side yard area variance of 29'.

Town of Copake

Building and Code Enforcement Officer

~ Hilarie asked if the porch will be screened.

~ Mrs. Fournier answered yes.

~ Frank would like to see a design showing the details of the roof construction. Are there hurricane clips, is the structure up to code?

The applicant will provide a structural design for the public hearing.

The application will be referred to the Planning Board.

Hilarie Thomas asked for a motion to accept the application for a public hearing on October 23, Michael DiPeri made the motion, Jon Strom seconded, all in favor.

2) **204-12, Christopher Johnson, Shagbark farm.** Tax Map # 166.1-87.

Area variance for 8foot deer fence.

Christopher Johnson came to the table to present the project.

Hilarie asked about the different names on the application.

Christopher Johnson explained that “Shagbark” is the name of the farm.

Mr. Johnson is a member in the LLC and can represent Shagbark farm.

This is a tree farm located off route 22, South of Pigasso farm.

Jon Strom suggested that the applicant bring a picture of the type of fence planned for the project in case someone asks to see a design.

The application will be referred to the Planning Board.

Hilarie Thomas asked for a motion to accept the application for a public hearing on October 23, Michael DiPeri made the motion, Jon Strom seconded, all in favor.

Continuation of the public hearing for:

2013-26 Berkshire Mountain Club @ Catamount ski area. Tax Map #157.1-11.100
Special use Permit, for a 3 building resort hotel project.

Harry Freeman from Rock Solid Development and Andrew Howard Attorney were present.

Richard Edwards and Tom Gilbert were in the audience.

~ Harry Freeman started with an update on the fact that the applicant group was not able to come to a previous meeting and the ZBA last month, had indicated that they will not have a quorum therefor the process for the obtention of the special use permit has been delayed.

He indicated that the Planning Board had given its approval for the site plan with some conditions as follow;

- That the Applicant shall fully comply with all terms set out in a letter dated June23, 2014 from Harry Freeman, Rock solid Development, LLC, addressed to Mr. Terence Hannigan, Esq., as counsel to the Hillsdale-Copake Fire District, which is incorporated by reference and is made an integral part of this Resolution.
- That the Applicant will plant four additional trees, as determined by the agreement between the applicant and the Breen estate and as indicated on landscaping Plans.
- That the Applicant provide to and for the benefit of the Town of Copake a bond to be applied to and utilized for the repair and remediation of any damages to Catamount Road arising from the applicant's construction related to the project.

Harry Freeman indicated that a lot of money is going to be invested to improve the access from route 23. He met with the Highway department superintendent who indicated that he was confident that the road will hold. The road will be rebuilt if need be.

- A balloon test was done and a rendering of what the buildings will look like.

Mr. Freeman presented a photo to the board. The request for the elevation documents has been handed out to the ZBA.

The first building will be 336 feet long and 80 feet deep.

The second building will be 95 feet wide and 85 feet deep.

The third building will be the same as the first except that it will be split in two to allow the passage of a drainage ditch. The building might not be exactly as it is planned now as the flow of water might not be sufficient for that feature.

- Changes were made to accommodate requests from the fire department.

Fire lanes were added. Two million gallons of water will be available for firefighting purposes. Two or three different sources of water will be available to the fire department. A turn around area for fire trucks will be provided.

The fire department will have the opportunity to examine and review the plans as the project evolves.

~ Harry Freeman indicated that the subdivision was approved and filed with the county.

The planning Board has approved the site plan.

The fire department has signed off on the project as well.

Ed Ferrato, Building Inspector, has reviewed all the issues and he is comfortable with the updated plans.

The town engineer has concerns that the project does not have final approval from the state for the intersection at Catamount rd. and route 23. The state has given conceptual approval, however if rights of ways are necessary for the improvement to the intersection, the state will wait until that part is resolved. The applicant is having conversations with the heirs of Linda Breen's estate regarding the issue.

~ Jon Strom asked what the state was waiting for.

~ Harry Freeman responded that the state is waiting for an approved site plan before they do their review.

~ Andy Howard indicated that this is part of the final site plan approval at that point the DOT can complete their review. Regarding the building, the elevation was reviewed with the Planning Board.

When considering the time line for the construction of the project, if the foot print differ from today's plans the applicant will present any significant changes to the Planning Board.

~ Jon asked where the service entrance will be located.

~ Harry Freeman responded that it will be in the first building. There will be walkways connection between the 3 buildings.

He recapped that for this project a number of reviews were done, an environmental review, the effect on the local businesses, the visual impacts, a number of discussions took place with the abutters, dealing with the construction equipment, the trucks coming in on a single day at time of pouring the foundation might be over the limit previously agreed upon but that would be an exception. Overall hours of construction are part of the conditions.

At the present time the viability of the project is based on when ground can be broken. Spring of next year would be ideal. A substantial amount of money has been invested in the planning of this project as well as in advertising.

- ~ Harry Freeman requests that the ZBA makes a determination tonight, any further delay will cause the laying off of some personnel.
- ~ Hilarie asked about if the denial from the town of Egremont to move a maintenance shed was affecting the project.
- ~ Harry Freeman responded that a different location will be provided for the shed and solution will be worked out.
- ~ Frank Peteroy noted that the historic of the road shows a base that is not adequate for the intended use. Tests boring were not done and by looking at soil maps it shows a weak base.
- ~ Ken Dow indicated that this issue should not be a concern of the ZBA and not a factor in making a determination.
- ~ Harry Freeman pointed out that any problems with the road, its reconstruction if necessary and maintenance during the construction has been worked out and a \$200,000. bond to cover the expenses. The town engineer agreed to that. There are ways to remedy any issues with roads. The tests boring were going to be another expense and would not have added anything to the project since it was agreed that the road will be reconstructed.
- ~ Andy Howard indicated that ultimately the developer agreed that the road will be his responsibility.
- ~ Frank Peteroy noted that in reference to a letter from the DOT with a benching solution request for the entrance, there will be an encroachment onto other people's property. Also Frank indicated that he cannot find the owner of the property connecting Route 23 and Catamount Rd.
- ~ Harry Freeman said this is a legal issue that should not be the concern of the ZBA. There is a plan that will most likely be approved by the DOT. If there is encroachment, land can be acquired through eminent domain. A retaining wall would resolve the issue if no other option is available. The improve road will be an asset to the town.
- ~ Andy Howard clarified that the DOT has jurisdiction over that issue.
- ~ Frank asked about the letter dated September 1st, 2014 referring to a stream disturbance from the Army Corps of Engineers.
- ~ Harry Freeman indicated that it should not be the ZBA'S concern, the bulk of the water for fire protection does not come from that stream.

- ~ Frank Peteroy mentioned the letter August 7, 2014 from James Brennan, Hillsdale-Copake Fire District. He voiced his concern regarding the capacity of the fire department to effectively extinguish a fire in the planned structures.
- ~ Harry Freeman indicated that the fire department has spent a good amount of time and had a number of meetings with the developer , after working out a lot of points the fire department has no objection to the project. The fire department feels that they have the adequate apparatus to be effective . Access plans will be worked out and studied by the firefighters. The buildings are meeting all the fire codes.
- ~ Frank Peteroy went on to look at the SEQR.
- ~ Ken Dow indicated that the SEQR was done and it is now a closed issue. It is a Planning Board jurisdiction and cannot be revisited.
- ~ Frank Peteroy pointed out a previous correspondence from A. Gilchrist indicating an agreement to transfer property between the Swiss Hutte , Catamount and Neopolis. Frank is concerned with the impossibility for the Swiss Hutte to have quiet enjoyment of their property.
- ~ Ken Dow noted that the issue of a prior land transfer is not part of a concern for the ZBA to make a determination. This is an application for a special use permit and although there are a lot of issues this one is not one for the ZBA. Private covenants, private deeds are contractual issues and the ZBA cannot use this for a base to make a decision. The impact of the project however has its merit in the discussion.

- ~ Hilarie asked if anyone had comments.

- ~ Jonathan Tingley from Tuczinski, Cavalier & Gilchrist representing the Alpers of the Swiss Hutte stated that although they were not present tonight the Aplers still had great concerns about the project and its impact on their business. Discussions with the developer are ongoing but no resolutions have been made. He made reference to the letter dated September 25, 2014 requesting that the ZBA defer any action on the special use permit application to allow more time to complete a potential resolution.
- ~ Jeff Nayer: Copake Town Supervisor, addressing the board as former ZBA Chairman and a Copake tax payer; noted that every time, at the last minutes, letters are coming from the attorneys trying to delay the process. It is time for the ZBA to close the hearing and make a decision.
- ~ Jonathan Tingley debated that the reason for this last minute letter is that until 4:15 tonight a solution was still being worked on but no resolution came out.

- ~ Kenneth Flood : Columbia County Planning & Economic Development stated that the board is doing a great job but he agrees with the town supervisor that it is time to make a decision. The project is a good project, little impact on the school district, positive impact on the taxes and the surrounding towns. All the information is there, everybody

worked very hard on it. It will have a great economic impact on the town and the county.

- ~ Ed Ferrato: Building Code enforcer, met with Columbia County highway supervisor, Copake highway supervisor and the developer to work out a best possible plan for the road. It is not a perfect situation but all is done to make it safe as well as on Nicholson road. The maximum possible widening of the town road will improve it. He is ready to issue a building permit as soon as the other town boards come to a decision.
- ~ Harry Freeman confirmed Ed Ferrato's comments and elaborated on the details to enhance the safety of the Catamount and Nicholson road. He is trying to address every ones concerns and will continue to work with all concerned parties.
- ~ Adam Resnikoff was questioning the hold up with the abutters and the developer.
- ~ Andy Howard responded that discussions are ongoing with all the party involved and a decision needs to be made by the ZBA for the process to move forward.
- ~ Harry Freeman indicated that he cannot continue to support the project if the process does not go forward.

Hilarie Thomas asked for a motion to close the public hearing. Michael DiPeri made the motion, Jon Strom seconded, all in favor.

~ Hilarie indicated that the ZBA has 62 days before rendering a decision, but she believed that the members will be able to make a decision tonight.

~ Andy Howard wanted to add a few words before the vote took place. He acknowledge all the work that the ZBA had put in.

In term of this project, it was clearly described by Rock Solid Development as a resort hotel. In the table of rules and regulations of the town of Copake it indicates that resort hotel/resort lodge are permitted uses in the residential (R) zoning district, subject to the applicant obtaining site plan approval and a special use permit.

The applicant went through a full SEQR review, a subdivision process and a site plan review process.

~ Mr. Howard noted that in 2003 on the exact same location for the Neopolis project, the ZBA rendered a formal interpretation, that under the Copake Zoning Code, units sold in a condominium/timeshare format meet the definition of resort /hotel.

~ Mr. Howard read on the copy of the February 27, 2003 ZBA resolution.

In June 2005 the planning board came to the same conclusion.

On the present application on August 2014 the planning board on the SEQR adopted a Negative Declaration expressly addressing the issue of the resort/hotel and determined that the use is consistent with the town of Copake Comprehensive plan which encourages

the development of a resort/hotel on the subject site. And that the project does not have any significant adverse impacts on the environment.

Mr. Howard handed to the board members a packet dated September 25, 2014.

~ Hilarie noted that article 232-28 states that the ZBA has original jurisdiction on special use permits. She asked that members explain the reasoning behind their vote. She cited section 232-28 of the Copake Zoning Code.

F) Conditional uses for which a special use permit are required are uses which are permitted as designated but which possess characteristics which require that each such use to be considered an individual use and subject to certain restrictions or conditions by the Zoning Board of Appeals for the protection of the health and general welfare of the community, including buffering or screening.

G) 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 and applicable local codes and ordinances.

~ Ken Dow, Copake Town attorney, indicated that the question of the determination for hotel resort was raised back in April. Is it a hotel resort or a condominium? The question can be addressed specifically. The ZBA does not have to follow the interpretation of the ZBA from 2003. The fact that the board made this particular decision then, can be used by the members to follow or they can depart from that decision but a rational explanation would have to be submitted. If the board reaches a two to two decision the prior decision from the ZBA would stand.

This board is missing a member and was unsuccessful at filling the vacant position. This is now a four member board and the possibility of a tie vote exist. What would happened in that case? If there is a tie, the prior decision made by the ZBA in 2003 would hold and allow the project to stand as a hotel resort.

Ken Dow went through the differences between use variances and special use permits. He cited a case in Claverack; Particular proposals have to be compared to the particular and specific standards that are set by the zoning code.

He mentioned again the three point to take in consideration when making a decision;

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

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

Such use will be in conformance with the New York State Uniform Fire Prevention and Building Code.

Hilarie asked for a motion to vote on the special use permit for Berkshires Mountain Club special use permit.

Jon Strom made a motion to vote, Michael DiPeri second, all in favor.

Roll call vote;

Frank Peteroy vote is NO.

Mr. Peteroy stated that his reason for the negative vote was that this project is a condominium not a resort hotel. All the advertisements in local papers show clearly the indented use. The hotel portion is may be 1% of the entire project.

Project should be filed as a multiple dwelling.

~ Ken Dow interjected that that was not a legally valid reason to deny the special use permit and that specific issue was just discussed. The board is bound to follow the prior determination, until it is override by a majority vote.

Frank Peteroy argued that he disagreed and all the interpretations that he read about pointed to condominium. He does not oppose to a resort hotel.

Frank Peteroy questioned why the project is filed with the attorney general as a condominium and filed as a resort hotel with the town of Copake.

He is aware of the differences between a multiple dwelling and a hotel resort.

Hilarie Thomas vote is NO.

She indicated that she took in consideration all the elements that were presented over the past 9 months. Elements from the applicant, the abutters, the fire department and all the party involved.

A lot of pressure was put on this board to make a decision on that application to either approve or disapprove.

The 2003 and 2005 determinations was based upon different plans, this is a new application not a re-approval of a 10 year old project.

The impact on the surrounding area would be substantially detrimental based upon the present project plans.

She also noted that the project is not a resort hotel but a multiple dwelling and the misrepresentation a way for the applicant to try to bypass the town code.

She referred to the town zoning code describing hotels.

The fire department and the code enforcement officer worked very hard to put a safe plan together.

If the project had been configured as a resort hotel she would have agreed to a use variance and she would have considered that plan beneficial to the community.

Michael DiPeri vote is YES.

He does not challenge the prior ZBA decision, he feels that the location is adequate, the fire department is satisfied with the plan, as well as the town engineer. The code enforcement officer has no objection to the project.

The safety and welfare of the guests have been addressed.

Jon Strom vote is YES.

Jon mentioned a prior situation where slaughters houses were expressively forbidden in the town zoning code, but when the code allowed for hotel resorts the proposed project is certainly what was envisioned.

Whether it is a condominium or a resort hotel the feeling is the same, there is a lobby, a dining room, it is public. The project would be good for the community and the abutters when construction is completed. Tax revenues would benefit everyone. The fire department did a great job going through all the details to ensure the safety of the guests. The project fits in the environment nicely.

2 - 2 Vote. No determination was made.

~ Mr. Howard noted that the town attorney's advice was not followed in regards to the resort hotel issue and he asked that the board reconsider their vote.

~ Hilarie and Frank stated that they were not willing to reconsider their vote.

It was indicated to the applicant that a copy of the recording of the meeting would be available through FOIL.

Meeting was adjourned at 9:30 PM.

Respectfully submitted.

Recording Secretary.
Veronique Fabio

