

**Town of Copake  
Zoning Board of Appeals  
Minutes-September 27, 2012**

The regular meeting of the Zoning Board of Appeals of the Town of Copake was held on Thursday, September 27, 2012, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman Frank Peteroy at 7:08 PM.

Present at this meeting were: Frank E. Peteroy, Emilee Drobbin, Hillarie Thomas, Jon Strom, and Kenneth Dow, Copake Town Attorney. Glen Schermerhorn was absent. Michael DiPeri was not present at roll call and arrived late. An audience of about 12 was present including Jeanne Mettler, Town Board Liaison.

Frank called for an executive session for an internal discussion among the board members that would take 20 minutes maximum.

Ken Dow intervened and pointed out that an executive session was not permissible, only if personal matters where privacy is involved can the board have a separate and private discussion.

Emilee suggested that Frank conference for legal counseling with Ken Dow.

Frank and Ken Dow stepped outside the meeting room and came back a few minutes later. Frank announces that the Board will proceed with the regular meeting.

**Minutes:**

Frank noted that the August minutes needed some corrections and will be reviewed at a later time. Frank noted that the April minutes were still open.

**Correspondence:**

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

9-12-2012 ----- Memo from Planning Board in Ref to Gursky house replacement SW Colony Rd.

9-18-2012-----Hilscher & Hilscher in Ref. to Cook/Ruppe/Mormando/Tobash/Osswald Chrysler Pond Tax Map # 186.1-77

**Closed Public Hearing:**

None

**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 handed out financial documents that had been required at the last meeting, as well as a diagram for the trailer showing the location of the proposed fences and decks.**

**Frank questioned the validity of the financial report in the state of NY from an accountant located in Connecticut. Frank also noted that there was no mention of Public Certified Accountant on the letter head.**

**Jon agreed that Frank's remarks were pertinent.**

**Frank noted that on the diagram there were 2 or 3 different sizes for the trailer.**

**The plan that Ag. and Market approved is for an 8 Foot trailer, the presumption is that all activity is going to be at the south end of the trailer, to load and unload .**

**Frank questioned how this will be done considering that there are only 25 feet available to circulate around the trailer.**

**Mr. Kitchen explained he will back up his truck with the poultry and he feels he will have enough room to maneuver.**

**Frank clarified that the processing of the poultry will go from North to South, from the back of the trailer to the front. He indicated to Mr. Kitchen that he could go with either an 8 foot or a 10 foot trailer. Frank also mentioned that the public hearing notice had been corrected from a 12 foot to an 8 foot wide trailer.**

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

**Ken Dow explained that the board's request for financial documents was a standard step in the decision process but the members should use their discretion to judge the request for a variance. The financial report does not have to meet special requirements.**

**Jon noted that the documents were needed to determine hardship, a key component.**

**Mr. Kitchen mentioned that he has used this accountant in Connecticut for many years, as well as his father and the IRS have accepted him as a CPA.**

**Kitchen made a list of the abutters and out of 9 neighbors, 3 had reservations the other 6 had not made any comments about his project.**

**Frank suggested that since the concrete wall is only 92" high the wheels on the trailer could be taken off in order to make it less visible, enough room should be left to clean under.**

**The public hearing is still open; Frank suggested it will be left for a decision until the next meeting.**

**2 Application # 2012-11 Anne Captain, Tax map 165-14-2-64-200 , 637 SW Colony Rd. Hillsdale NY. Area Variance for garage and master Bedroom addition.**

**Ann Captain and Linda Chernewsky approached the table.**

**The well and septic location dictates where the addition will have to be built, also on the existing modular any access would be through the hall that is there now.**

**Variance requested is for front yard set back of 30 feet.**

**The lot size is .99, 41,000. Square feet.**

**Abutters were notified.**

**Plans were reviewed by the members. The 40 foot right of way and the location of the addition raised some questions that were discussed.**

Frank asked if anyone in the audience had questions being none, Hillarie asked for a motion to close the public hearing , Michael Diperi made the motion, Jon seconded, motion carried unanimously.

Frank 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.*

Frank asked for a vote on application 2012-11 for front yard set back 30Ft.

Jon; Yes, Hilarie; Yes, Frank; Yes, Emilee; Yes, Michael; Yes.

Area Variance granted

2 Application # 2012-12 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. Linda explained that the project consist of screening an existing deck and repair as needed, add a new front porch, and new windows to the existing house.

Applicant has obtained DEC approval and are waiting for Taconic Shore Owners association's approval.

There are no comments from any of the abutters that were notified.

Frank noted there should be storm water protection. He suggested hay bails with netting as a minimum protection. Protection should be shown on the plan.

There will be a roof over the screen porch.

The variance required is for set back from the lake. Existing deck is 41 Ft. from the lake.

Frank asked if any one in the audience had questions.

Being none, Frank noted that the lot was created before zoning went into effect in 1957, and anything over 5000sq. Ft. is a conforming lot.

**Frank asked for a motion to close the public hearing, Hillarie made the motion, Emilee seconded, motion carried unanimously.**

Frank 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

*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.*

Emilee asked if the protection wall was going to be part of the request from the ZBA, Frank and Hilarie answered yes it will be.

Frank asked for a vote on application 2012-12. for screening an existing deck and repair as needed, add a new front porch, and new windows to the existing house.

Jon; Yes, Hilarie; Yes, Frank; Yes , Emilee; Yes , Michael; Yes .

Area Variance granted

3 Application # 2012-13 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 came up to the table.

A variance is required for rear set back that cannot be met.

The new house will be higher than the original house (14 Ft.).

Frank asked how high will the new building be, Linda answered 28Ft. 10 <sup>3</sup>/<sub>4</sub>.

Frank asked about the building department denial.

Linda proceeded to read the letter from Building and Zoning Department.

*“Structure is larger and higher than existing structure, Section 232-24(b).*

*Structure is closer than the 75Ft rear yard set back. Density Control Schedule (R2).”*

Frank showed pictures of houses within 200 to 300 Ft. of the Gursky’s property.

A lot of the homes photographed are well over 28 Ft. in height.

Mr. Gursky showed photos on his computer of properties surrounding his lot.

There will be no encumbrance to anyone caused by the height of the proposed new house.

The lot is 20,700. Sq. Ft.

Jon asked if there was a view of the lake from Mr.Gursky’s property, he answered the lake can be seen between the tree trunks.

There is no need to cut any trees to accommodate the new building.

Hilarie asked if the Gurskys had right of ways to the lake, Mr.Gursky responded there were three rights of ways.

Jon clarified the height limit for the area being 35 Ft. He also asked, referring to the Planning Board message dated 9-10-12 if the board was looking at 2 variances, one for the larger size house and one for the rear yard set back.

The variance is requested for the relief from the 75 feet rear set back to a 58 feet rear set back.

Frank noted that it is a conforming lot, over 5000Sq. Ft.

Mrs Gursky pointed out that the planning board had received a report for the septic system being in working condition. She also noted that they had no need for a second bedroom in the attic and it could remain unfinished and they adjusted their plan from a 2 bedroom house to a one bedroom.

Frank asked how many gallons was the septic and how old was the leach field. The septic is a 500Gallons poly tank that goes into a 600 concrete septic, the leach field was repaired in 2005.

There will be stairs going to the attic for use for storage.

There is no cellar; the garage will be below the house.

Frank commented that the exit door from the garage should swing out.

Frank asked if anyone had questions.

**Frank asked for a motion to close the public hearing., Hilarie made the motion, Emilee seconded, motion carried unanimously.**

Frank 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.*

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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: No, an old building is taken down and replaced with a new one just about the same size.

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.*

A lengthy discussion went on between the members and Ken Dow in reference to the request from the building department and the planning board and about the ZBA 's power to reverse or modify an order or decision by the building department.

*Frank read article 267-b Permitted action by the board of appeals:*

*Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation, or determination appealed from and shall make such order, requirement, decision, interpretation, or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.*

The board is overriding the building department opinion for the need for a height variance.

**Frank asked for a motion to close the public hearing, Hillarie made the motion, Michael seconded, motion carried unanimously.**

Frank asked for a vote on application 2012-13 on a variance for rear yard set back.

Jon; Yes, Hilarie; Hilarie; Yes, Frank; Yes, Emilee; Yes, Michael; Yes.

**Area Variance granted.**

**New Business:**

**New application**

Mr Phillips was absent for:

#2012-14---- Tom Phillips 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.

#2012-16-----Wagner, Rep. by Linda Chernewsky presented; , Tax Map #165.5-1-2, 103 Golf Course Rd. Copake NY. Area variance requested to take down existing house and replace with new house on same foot print.

Mr. Wagner's house is on Copake Lake, the house has been neglected and is in disrepair, Mr. Wagner would like to rebuild a new house on the same foot print.

DEC has been contacted and ruled out no permits where required, the septic was just pumped out, there is a 1000 gallons concrete tank ,the waste gets pumped out by the Golf Course pump station. A new house would have to be built with a new foundation and some trees will have to be removed.

There is a storm water problem that floods the lot and washed out part of the foundation. Jon asked about the water issue and if it is washing over the septic tank. Linda explained she planned to create extensive drainage to divert the water away from the base of the house. Mr. Wagner presented some pictures showing the overgrown trees and the water damage. Frank asked if there will be a basement in the new planned house and will it be water proof. Frank wants to see the concept behind replacing the foundation and the drainage system. A storm water protection plan and a landscaping plan will have to be shown. The silt fence is shown on the plan.

**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**

At the close of the Wagner matter Board attorney Ken Dow spoke up to correct what he had said earlier about the Board's power to reverse or modify an order or decision by the building department when an applicant is before the board seeking a variance. He said that he was mistaken when he said that an applicant's request for a variance and an applicant's request for a reversal or modification of a ruling should be treated as distinct from one another, and that the board could consider only one or the other, depending on what the applicant was asking for. He said that the correct reading is that when an applicant comes before the ZBA to appeal a denial, the ZBA has the option either to overrule the original ruling or to grant a variance to the original ruling, if it sees fit, as long as the Board's action is in response to the denial.

#### **Old Business**

Lisa Nielsen came to the table she presented a letter to the members, requesting the reopening of the public hearing for her property. She mentioned that her attorney had suggested that she should represent her request for a variance before she proceeds and files complaints against the violations of other property owners around the lake .

Frank reiterated that a variance was granted and the terms were violated.

If the applicant feels that she can submit evidence that would support the need for a second patio, a new application could be filed with the building department. The DEC should also be contacted.

Ken Dow pointed out that a rehearing can be done only at the request of a board member and a unanimous vote by the members. The best approach would be to file a new application.

Michael asked if the violation had been corrected and if anyone among board members wanted to make a motion to reopen the public hearing.

Frank reiterated that a variance was granted and the terms were violated. The ZBA follows the town zoning rules whatever was done on other properties in the past has nothing to do with the application that was submitted to the ZBA by the present applicant.

#### **Adjournment**

**Jon asked for a motion to close the meeting, Emilee seconded, motion carried unanimously.**

Meeting was adjourned at 9:11 PM. The next meeting will be held on September 27, 2012

Respectfully submitted.  
Veronique Fabio  
Recording Secretary

