



# **COPAKE PLANNING BOARD**

## **NOVEMBER 6, 2014**

### **MINUTES**

---

#### **DRAFT**

**Please note that all referenced attachments, comprising 3 pages, are on file with the Copake Town Clerk and in the Planning Board office. An annotated listing of those attachments appears at the end of this document.**

---

A regular meeting of the Copake Planning Board was called to order at 6:55p.m. by Bob Haight, Chair. Also present were Chris Grant, Marcia Becker and Julie Cohen. Ed Sawchuk arrived shortly after the meeting began. Steve Savarese and Jon Urban were excused. Lisa DeConti was present to record the minutes. Supervisor and Board Liaison Jeff Nayer was also present.

#### **ZONING BOARD OF APPEALS – Referrals**

##### **2014-23      ZBA REFERRAL/SPR – DAVID KIEFER AND ANDREA FRESHMAN – South West Colony Road [Copake Lake]**

Submissions included:

- Referral from ZBA Chair, Hilarie Thomas dated October 25, 2014
- ZBA Referral letter from CEO Ed Ferratto
- Asbestos Report
- Pictures

Linda Chernewsky appeared along with Project Engineer George Schmidt. Ms. Chernewsky acknowledged that she has already appeared before the ZBA and a Public Hearing is scheduled for their November meeting.

Ms. Becker noted that Mr. Kiefer and Ms. Freshman's property is on two (2) lot parcels and asked if the intent is for the parcels to be merged. Ms. Chernewsky advised her that the parcels have already been merged. Mr. Haight questioned the square footage of the existing house verses the new house. There was confusion as to whether the new house will be eight-hundred and forty (840) square feet or whether the existing house is presently eight-hundred and forty (840) square feet. After discussion it was noted that the existing house is twenty by thirty-two (20 x 32) and six-hundred and forty (640) square feet and the new house will be twenty-eight by thirty (28 x 30) and eight-hundred and forty (840) square feet.

Mr. Haight made note of the fact that the house is being moved further back from the lake. Ms. Chernewsky acknowledged that the existing house is presently eighteen feet (18') from the water line and plans for the new house place it at thirty-two point twelve feet (32.12') from the water line.

Ms. Chernewsky also pointed out that the existing septic is a dry-well located right next to the house approximately twenty feet (20') from the water and she is proposing a new septic design that will move the system further back. Ms. Becker questioned how much further back the new system will be and was advised by Mr. Schmidt that he believes the system tank will be located approximately forty-five feet (45') from the water line with the closest field measuring seventy-five feet (75') back.

Mr. Grant asked what variances are presently before the ZBA and was advised by Ms. Chernewsky that relief is needed from Section 232-9P(1) *One-hundred-fifty-foot setback from lake or stream; (1) No septic tank or tile field shall be located closer than 150 feet from a stream, creek, wetland or other body of water. No development shall be permitted closer than 100 feet to a stream, creek, wetland or other body of water* and 232-9P(2) *Open porches and decks attached to a residence shall be exempt, provided that all other requirements can be met, and provided that such porch or deck shall never be enclosed.*

Ms. Chernewsky also acknowledged that by moving the structure further back on the parcel she was able to meet the thirty foot (30') set-backs on both sides. Mr. Grant advised her that there are other set-backs that need to be met. Ms. Chernewsky acknowledged that a front yard variance of twenty feet (20') is needed for relief from Section 232-24B(a)[5] *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* is also needed. Ms. Becker made note of the fact that the structure is not being modified as it is a replacement. Mr. Grant then acknowledged that relief from section 232-24B(2)(b) *Replacement. A nonconforming structure may be replaced to occupy the same space on the lot or rebuilt providing greater yard space and less lot coverage and not exceeding the height of the prior structure except as provided above or as approved by the Planning Board in a site plan review and approval* is the Section that applies. He asked if this is identified as the variance being sought.

Ms. Chernewsky made note of the fact that the code allows a structure to be rebuilt on the existing footprint but in this instance the site is being improved by moving the structure further back on the property. Mr. Grant clarified that this argument will need to be made to the ZBA and all the Planning Board is trying to do is identify what Sections of the Code need to be addressed.

Mr. Grant brought up the fact that under Section 232-24B(2)(b) the height of the structure cannot exceed the height of the prior structure. Ms. Chernewsky pointed out that plans for the new structure are at a height of thirty-five feet (35'). Mr. Grant advised her that a height variance will also need to be requested from the ZBA.

Ms. Becker acknowledged that Ms. Chernewsky is improving the lot by moving the structure but inasmuch as the lot is non-conforming it cannot be over-built. Ms. Chernewsky clarified that the lot coverage is only at fourteen percent (14%).

A discussion ensued as to the buildable height allowed and it was noted that inasmuch as the lot is an undersized lot in the R-2 District a height variance is required. It was also noted that the needed variances include a Front Yard Set-Back Variance, a Height Variance, a Rear Yard Set-Back Variance and a Replacement Variance for a larger footprint.

Mr. Schmidt explained that an advanced type treatment septic system that is enclosed is being proposed. He noted that this type of system is most often used in lake community areas. Ms. Becker questioned whether the soil had been tested and was advised that the Department of Health has been to the site twice so as to decide the best placement for the system. Ms. Becker asked the location of the wells and was advised by Mr. Schmidt that the closest well was eighty-nine feet (89') and not in a direct line of drainage as they are uphill from the system. Ms. Becker advised that a variance will also be needed for Section 232-9G *Sewage systems. No person shall undertake to construct any new building or structure in the Town without first meeting the requirements for a system, or facilities, for the separate disposal of waterborne sewage, domestic or trade wastes in accordance with applicable regulations of the Town and the Columbia County Department of Health. Wells shall be located at least 100 feet from the closest point of such sewage system as the system is located closer than one-hundred feet (100') feet to a well. It was also noted that relief from Section 232-9P(1) One-hundred-fifty-foot setback from lake or stream. No septic tank or tile field shall be located closer than 150 feet from a stream, creek, wetland or other body of water. No development shall be permitted closer than 100 feet to a stream, creek, wetland or other body of water* is also needed

It was acknowledged that a letter of approval will be provided from the Department of Health and an engineer for the Town is not needed to look at the system as it will be stamped by the applicant's engineer and reviewed by the DOH.

Mr. Grant questioned whether any grading will be done between the house and the lake and was advised that some grading is planned. He then advised that a variance will be needed for this as well. Mr. Haight pointed out that this will also fall under Section 232-9P(1).

Ms. Chernewsky acknowledged that asbestos testing was done and there was a heat shield behind the wood stove that had been taken out and documentation of this has been provided.

The ZBA will be advised of the correct sections of the Code that need to be identified.

## **2014-25          ZBA REFERRAL – LINDSAY LEBRECHT – Lakeview Road [Copake Lake]**

Submissions included:

- Referral from ZBA Chair, Hilarie Thomas dated October 25, 2014
- Ed Ferratto Referral Letter dated October 7, 2014
- ZBA Application
- Request for Area Variance for the height of the fence
- Map
- Pictures

Mr. Haight acknowledged that Ms. LeBrecht wishes to place a fence higher than allowed by the Code on the side between her house and the commercial property next door. Mr. Grant believed the property is commercially zoned. After checking the zoning map Ms. Becker advised that these properties are not commercially zoned however it was noted that the Marina, which is the

adjacent property to Ms. LeBrecht, is most likely grandfathered. Mr. Grant pointed out that it shouldn't be dependent on whether the property is commercial or not but what is dictated by the Zoning Code.

Mr. Grant advised that the Board can't really comment on anything other than the relevant Sub-section of the Code. Ms. Becker pointed out that there is an existing fence that is most likely being replaced and questioned whether this is a grandfathering issue since the fence appears to be closer than one-hundred feet (100') from Copake Lake.

A discussion ensued as to the location of the fence as this was not clear on the map provided. It appeared to Mr. Haight that the only area needing a variance is the portion toward the front of the property. The height of the fence was noted to be eight feet (8'). Ms. Becker questioned whether the one-hundred foot (100') set-back requirement was applicable for this. Mr. Haight believed it is.

Supervisor Nayer questioned whether there is an existing fence and was advised that there was. He acknowledged that a fence can be replaced inasmuch as one exists and the only variance needed would be for the height of the replacement fence. *232-9F: Fences and walls. Fences or walls within a front yard shall not exceed four feet in height. Fences or walls in a side or rear yard shall not exceed six feet in height. Where corner sight distances are required for traffic safety, these heights will be reduced as required by the Town Highway Superintendent and/or Town Building Inspector. These regulations shall apply to all fences or walls, with the exception of fences required under Chapter 156 of the Code of the Town of Copake pertaining to junkyards and motor vehicle storage areas. The Town Building Inspector may authorize a retaining wall in excess of the foregoing height limitation when it is determined that the same is necessary for the proper safety and preservation of persons or property.*

Mr. Grant acknowledged that the code states that when corner sight distances are required for traffic safety these heights can be reduced by the Town Highway Superintendent and/or Town Building Inspector. Mr. Grant had concerns that inasmuch as Birch Hill Road enters Lakeview Road in that area and the sight distances are not good which can be impacted with a fence. Ms. Becker also felt the ZBA should be advised that this falls within the one-hundred foot (100') set back to the water, that there is an existing fence and that this might be grandfathered. Mr. Haight pointed out that the disturbance would be minimal.

Lindsay LeBrecht arrived later in the meeting and clarified that the fence she is requesting is eight feet (8') on the side between her and the Marina. She also explained that the fence will not run the whole depth of the property and will be intermittent as there is some heavy vegetation that will remain. She also provided a picture of the type of fence she would like. Ms. LeBrecht also clarified that she is not planning on going all the way to the road as the fence will start behind a large tree in the front yard. Ms. Becker acknowledged that this will make a difference in the sight lines. Mr. Grant suggested visiting the site to have a better idea of the fence placement.

A letter will be written to the ZBA expressing the Board's concerns.

## **PUBLIC HEARING**

None

## **SUBDIVISION/SITE PLAN**

### **2014-23      MINOR SUBDIVISION – FARMLAND RENEWAL – County Rte 7A [Copake]**

Submissions included:

- Request letter to be added to Planning Board Agenda
- Sketch Plan
- Planning Board Application
- Letter of Agency
- Application Fee

Bob Bernstein, Managing Member of Farmland Renewal LLC appeared along with Realtor Margaret Avenia. Mr. Bernstein explained that Scenic Hudson has purchased the development rights to both Farmland Renewal LLC parcels which will have a conservation easement on them. Mr. Bernstein brought up the fact that a house existed on one of the parcels but not on the other. He was advised to set aside a portion of land for the second parcel before the Conservation Easement was in place should they wish to build a house on that parcel in the future.

Mr. Haight questioned whether a Perc Test had been done and Mr. Bernstein acknowledged that one was scheduled. Ms. Becker brought up the fact that an Agricultural Data Statement would also be needed. Mr. Haight informed Mr. Bernstein that the Board of Health will need to do a Perc Test and the Board requires a letter from them regarding the results.

Mr. Bernstein acknowledged that Crawford and Associates is surveying the property and Ms. Cohen suggested that the Perc holes be noted on the maps. Mr. Bernstein questioned the deadline for submissions for the December Planning Board meeting and was advised that submissions should be received ten (10) days prior to the meeting which is on December 4<sup>th</sup>. Mr. Bernstein explained that he would like to have the process completed by the December 17<sup>th</sup> closing and was advised by Mr. Grant that in lieu of a Public Hearing he could present the Board with letters of consent from the abutting neighbors. Ms. Becker also advised that the potential driveway location needs to be placed on the survey map and this needs to be determined by the County Highway Superintendent.

On a motion made by Mr. Grant and seconded by Ms. Becker the Board voted unanimously to classify the application for Farmland Renewal LLC as a Minor Subdivision and set a Public Hearing for next month's meeting.

## 2014-26      SITE PLAN CONFERENCE – GRAY DAVIS – Cove Road [Copake Lake]

Submissions included:

- Site Maps

Gray Davis appeared before the Board for a Site Plan Conference. Mr. Davis explained that part of the property is in the ‘R’ Zone and part of it is in the ‘R-2’ Zone. Mr. Haight questioned whether the property was near the mailboxes and was advised by Mr. Davis that the mailboxes were at the top of the hill.

Mr. Davis explained that the driveway has been cut in at the top end of the property and the road hooks around. Inasmuch as the property is a long narrow parcel Mr. Davis wanted to distinguish the set-backs. Mr. Davis made note of the fact that in the location he has the structure positioned little or no trees are planned for removal as the site had been previously cleared.

Mr. Davis presented two Site Plan options and assuming Cove Road is his fifty foot (50’) set-back he would need a variance for the one-hundred foot (100’) rear yard set-back. Mr. Davis brought up the fact that the road curves around and felt that inasmuch as his driveway is at the top of the property in the ‘R-2’ Zone this could be considered the front yard and his set-backs could be met.

A discussion ensued as to what constitutes the front of the house. Ms. Becker brought up a conversation she had with Attorney Tal Rappelyea who said that the front yard is based upon how you approach and enter the house. Ms. Becker did clarify that this was only a phone conversation and not a legal opinion. She also made note of the fact that there is nothing in the Code addressing this and the only direction she has on this is the fact that CEO Ferratto says the front of the house is toward the road. Mr. Haight also reviewed the building code regarding this and nothing is noted for this either.

Mr. Davis had concerns that a variance would not be granted and the parcel would not be buildable. Due to the circumstances of the property Mr. Grant did not feel the granting of a variance would be an issue as there is no way the set-backs could be met. Mr. Grant felt that given the particulars of the lot, a rear-yard set-back that doesn’t impact the people and the fact that relief from the provision is needed as the lot does not support a buildable footprint within the required set-backs, the ZBA should grant a variance. Mr. Davis will submit an application to the ZBA for a rear-yard set-back variance.

## MINUTES

The minutes were not approved at this time.

## **ADMINISTRATIVE**

**JANUARY PLANNING BOARD MEETING DATE:** Mr. Haight advised the Board that the January Planning Board meeting date falls on January 1<sup>st</sup> which is New Year's Day. The Board discussed available dates in January and chose to reschedule their meeting on Tuesday, January 6<sup>th</sup> at 7 pm.

**LETTERS OF INTEREST:** Mr. Haight acknowledged letters of interest from Chris Grant and Steve Savarese to remain Board members for another term. He did note that no other letters have been received as yet but the deadline runs until November 13<sup>th</sup>.

**LETTER FROM ROCK SOLID DEVELOPMENT:** The Board was copied on a letter from Rock Solid Development to the ZBA dated October 15, 2014 regarding the interpretation of whether the Berkshire Mountain Club at Catamount is a resort hotel or condominium project.

**LETTER FROM TUCZINSKI, CAVALIER & GILCHREST:** The Board was copied on a letter from Tuczinski, Cavalier & Gilchrest to the ZBA dated October 23, 2014 regarding the Berkshire Mountain Club at Catamount.

**LETTER FROM STEVE ROSENZWEIG & RESPONSES:** A letter from Steve Rosenzweig was received regarding a creek that runs through his property that he witnessed a resident add a bright blue material to. An e-mail response was received from Julie Cohen regarding Mr. Rosenzweig's letter. A letter was also received from Matthew Earnest in response to Steve Rosenzweig's letter.

**NO ACTION LETTER FROM ATTORNEY KEN DOW & RESPONSES:** A letter was received from Attorney Ken Dow regarding a non-action vote by the ZBA on the Berkshire Mountain Club at Catamount application. A response to Attorney Dow's letter was received from Hilarie Thomas along with a document that referred to an Ethic's Quiz. A response to this document was received from Attorney Dow.

**BERKSHIRE MOUNTAIN CLUB AT CATAMOUNT NEWSPAPER ARTICLES:** The Board was made aware of articles in the Columbia Paper and the Register Star regarding the decision made by the ZBA on the Berkshire Mountain Club at Catamount.

**INCREASE IN PLANNING BOARD FEES:** Mr. Haight presented the Board with copies of Planning Board fees in Hillsdale, Ghent, Claverack and Egremont MA. Fees of the different Towns were discussed by the Board. There were major discrepancies in the fees charged by the different Towns. Several options for fee increases were discussed by the Board. Supervisor Nayer suggested the Board give a fee increase some thought and when they decide what changes they would like to make they can then present it to the Town Board.

## **CARRY OVER**

The following matters were carried over to the next meeting:

**2012 -14      SPR/BLUESTONE & TRAFFIC CIRCLE – CAMPHILL VILLAGE – Camphill Road [Copake Lake]**

## **ADJOURNMENT**

There being no further business, on a motion made by Ms. Cohen and seconded by Ms. Becker, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 8:55 p.m.

---

Bob Haight, Chair

**Please note that all referenced attachments, comprising 3 pages, are on file with the Copake Town Clerk and in the Planning Board office. The referenced attachments are filed in the individual project files. An annotated listing follows:**

**ADMINISTRATION**

DAVID KIEFER & ANDREA FRESHMAN

October 6, 2014      Sawyer to Kiefer (1)

ADMINISTRATIVE

October 15, 2014      Grant to CPB/TB (1)

October 29, 2014      Savarese to DeConti/CPB (1)