

**Town of Copake
Zoning Board of Appeals
Minutes- September 22, 2011**

The regular meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, September 22, 2011, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman Jeff Nayer at 7:00 PM.

Present at this meeting were: Jeff Nayer, Frank Peteroy, Michael DiPeri, and Hilarie Thomas. An audience of about 6 were present.

Minutes:

Frank made a motion to postpone the approval of both the August 25, 2011 and the September 9, 2011 minutes in order to have more time to review them. This was seconded by Mike, carrying this motion, unanimously.

Correspondence:

The following correspondence was either reviewed or read;

- A. Columbia County Planning, 9/16/11, (Barringer)
- B. Copake Planning Minutes, 9/1/11

Closed Public Hearings:

None

Public Hearings:

Application # 2011-11, Marc Szafran, 2159 Cty Rte 7, West Copake, replacement of a front yard fence.

Jeff reminded all that this is a continuation of a Public Hearing from September 9, 2011. We did not close because we were waiting for some additional information. He quickly reviewed this case for those present; a stop order had been issued because Mr. Szafran had not obtained a building permit to replace his fence with a much taller one. The old fence was four foot, the new one six foot. According to zoning law 232.9.F, no front yard fence can be more than four foot. Mr. Szafran filed an application with the Zoning Board of

Appeals for relief from the law. Mr. Szafran was not able to be present for this meeting but was represented by friends. The Columbia County Highway Department was sent a referral, however we have received nothing back as of yet.

The additional information that was requested was supplied by Mr. Szafran, which consists of measurements: 14' distance from the fence to the road, Front of house to fence is 9' 2", and the edge of the fence to the center line of the road is 24'. Frank expressed concern that the fence could not be placed on the highway right of way. Jeff added that because the response has not yet been received from Columbia County, any decision made will need to be contingent on their approval. Frank added that the town would need to be relieved of responsibility for any vandalism that may occur since the fence won't allow for monitoring of the building.

Jeff continued that although a four foot fence is allowable in the front yard, a six foot fence is not. He expressed concerns that should this variance be granted the fence will be no taller than six foot from the ground to the top. He continued that if granted the part of the fence that has already been put up will need to be lowered as it is six foot four inches.

He asked if there were any other comments, with none being heard; Jeff asked for a motion to close this Public Hearing.

Frank made a motion to close this public hearing, seconded by Mike. This motion carried, unanimously.

He quickly recaps the application; it consists of a variance request to allow for a six foot fence to be placed in the front yard. The six foot height is to be measured from the ground to the highest point of the fence. Any approval of this by this board will be pending the approval from the Columbia County Highway Department. The town bears no responsibility for any criminal vandalism since the house will not be visible behind the fence.

Jeff asks the board members if they are ready to vote on this issue tonight or to wait. All respond that they are prepared to vote this evening. He reads the permitted actions by the Zoning Board of Appeals for an area variance:

- 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:
 - i. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the area

variance.

Answer: No

- ii. 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: Hilarie says yes, a four foot fence in the front yard is permissible by our law. This property was purchased with the full knowledge by the owner that it is very close to the road.

Mr. Szafran's friend responded that although this is true, the opening of the KOA Campground has changed the area. There is far more traffic because of it. Hilarie reminded him that they are located in a 35mph zone. To which he replied, yes and because of this there is a police officer two to three days per week parked in front of the house issuing tickets via a speed trap. The vehicles are larger and often towing campers, and in addition to this people are continuously stopping and asking for directions to the KOA. This has been happening on a fairly regular basis and it has become an invasion of privacy.

- iii. Whether the requested area variance is substantial;**

Answer: Mike & Jeff, No; Hilarie, Yes

- iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;**

Answer: No

- v. 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, but not a problem.

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.

Jeff again reviews the variance that we will be voting on. A request to allow for a six foot fence to be placed in the front yard. The six foot height is to be measured from the ground to the highest point of the fence. Any approval of this by this board will be pending the approval from the Columbia County Highway Department. The town bears no responsibility for any criminal vandalism since the house will not be visible behind the fence.

Jeff asked for a roll call of vote: Frank; Yes, Hilarie; No, Jeff; Yes, and Mike; Yes.

Jeff announced that this variance will be granted. The Action Taken forms will be mailed to the applicant and will be on file with the Town Clerk. In addition the Planning Board, Building Inspector, and Zoning Enforcement Officer will receive a copy for their file and records. In addition a copy will be sent to the Columbia County Highway Department.

Application # 2011-08, 2011-09, & 2011-12, CampHill Village, Ring Rd, Special Use Permit and 5 Area Variances for setbacks. Specifically:

Application 2011-08, CampHill Village, Ring Road, Area Variances for setbacks.

1. Village Green, front yard setback
2. Greenhouse, setback from body of water
3. Greenhouse, front yard setback

Application 2011-09, CampHill Village, Ring Road, Area Variances for setbacks.

1. Village Green, setback from body of water
2. Implement Shed, front yard setback

Application 2011-12, CampHill Village, Ring Road, Special Use Permit, Adult Care Facility

Jeff reviewed the application, he added that he had spoken with Attorney Rupleayea regarding the issue of making one motion to open and close the Public Hearing. The Town Attorney said that this would be permissible, however when it comes time to vote, each variance needs to be voted on separately. Jeff then added that two of the abutter notification letters had been returned, undeliverable as addressed. The Public Hearing can be opened this evening, but must remain open to allow notification of these two abutters.

Frank makes a motion to open the Public Hearing, seconded by Mike. This motion carried, unanimously.

Ms Alex Sloan, project architect; Ms. Jolanda Jansen, project engineer; and Mr. Jos Smeele, facilities manager were present to answer questions for these applications. Ms. Jansen explained to those present that CampHill Village was preparing a twenty year plan for improvements, and in doing so discovered some oversights. They are attempting to clean up and have everything in compliance with current town code.

Jeff continued by asking Marcia Becker, Planning Board Chair if the Planning Board, which is the lead agency for this project if they had researched the building permits. Her response was no. Mr. Smeele, added that he will research from his end and supply copies if possible to the ZBA and Planning Board.

Jeff went over all the buildings and the variances that were needed:

Village Green was built in 1989. A building permit was granted for this building. The town owns CampHill Road and the right of way which is 75 feet from the center of the road. This building would need a 25 ft front yard variance, and a 59 ft set back variance from a body of water which is a stream.

Greenhouse would need a 31 ft front yard variance from CampHill Road, and a 26 ft setback variance from the pond. This building it was determined was a low impact kind of building used to start the plants for the vegetable gardens. The vegetables are for the villagers consumption, farming for the village is an accessory use.

Implement Shed would need an 81 ft. setback variance from the pond. This building was rebuilt in 2004 after being destroyed by a fire. It is used for garden machinery. Frank asks if it had a concrete or dirt floor. It was determined that the farm equipment was stored on a dirt floor. The concerns were for any gasoline or oil seeping into the soil and eventually into the water table. Hilarie suggested that the soil should be tested before the requirement to install a concrete floor. Frank added that the law requires that the concrete would need to be on an incline away from the body of water. He then added that should there be a leak of some kind where would this be draining to. Hilarie asks that the soil testing results be forwarded to the ZBA as soon as possible.

CampHill Village would require a special use permit to allow for an adult care facility. Jeff read a letter from town attorney, Tal Rapleyea which explains his position in accordance with town code. This adult care facility is pre existing, with a 24 hour, 7 day per week, and 365 days per year facility. According to 232 attachment 2:1, in the R Zone a special use permit is required for any Day Care or Residential type facility.

Jeff asked about the septic systems of these buildings. Jolanda explained that the CampHill Village Facility was on a central septic treatment system. She located the building on the map for board members to see in relation to the roads and stream. Mr. Smeele further explained that it was a complete gravity system with sand filters and leaching pits for all the buildings within the village. Jolanda further pointed out manholes and pipes leading to the sand filters. Hilary asks if Ring Road was a town road or an internal road. Answer it is an internal road.

Hilarie makes note that although the application is for a residential facility they do have a retail business.

This Public Hearing will remain open and continue onto the October 27th meeting.

Application 2011-13, Gene & Kelly Thorn, 25 Melvin Rd, Copake Lake, Area Variance for setback for a Screened porch.

The Thorn's came forward to answer questions. This application was reviewed. Jeff quickly reviewed this application, it would be for an existing deck, the applicants wish to add a roof and screen it in. It was noted that this is a non-conforming house and the

addition would be increasing the non-conformality. This was a corner lot on Melvin & Winding in the R-2 Zone. The setbacks would be for two front yards.

Hilarie made a motion to open this Public Hearing, seconded by Mike. This motion carried, unanimously.

Hilarie asks the Thorn's about Winding Road, they reply that this road was never developed and remains a dead end to the wood lot behind his house. Jeff asks how much property is in this parcel of land. Mr. Thorn answers that it is .35 acres. Jeff reminds the applicants that this will require a site plan review from the Planning Board and any vote on this application tonight will be subject to the Planning Board's approval for site plan for a non-conforming building on a pre-existing non-conforming lot. The porch will be in the same foot print of the existing deck.

A discussion arose as to whether this would be two front yard setbacks, or a front yard and a side yard, or a front yard and a rear yard. This was a difficult decision as the Winding Road is not a public road. Frank asks should Winding Road be developed how would the subdivided lots get access; this subdivision is on file with the County Clerk's Office and could be developed at some point. Mr. Thorn answered that very likely the lots would be accessed from Leroy & Birch Rd. The decision was that two side yard setbacks would be appropriate to this situation.

Jeff asked if there were any further questions, when there were none he asked for a motion to close the public hearing.

Mike made a motion to close this Public Hearing, this was seconded by Frank. This motion carried, unanimously.

Jeff summarizes this application for the ZBA members in preparation of a vote. This will be for a screened in porch onto an existing deck, a side yard variance of 21 feet from the end of the deck, being a relief of 9 feet less on the north side, and a side yard variance relief of 13' 4" on the east side, pending site plan approval from the Planning Board.

- 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:
 - i. 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

- ii. 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

- iii. Whether the requested area variance is substantial;**

Answer: No

- iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;**

Answer: No

- v. 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, most are.

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.

Jeff again reviews the variances that we will be voting on. This is a request to allow for a screened in porch onto an existing deck, a side yard variance of 21 feet from the end of the deck, being a relief of 9 feet less on the north side, and a side yard variance relief of 13' 6" on the east side, pending site plan approval from the Planning Board.

Jeff asked for a roll call of vote: Frank; Yes, Hilarie; Yes, Jeff; Yes, and Mike; Yes.

Jeff announced that this variance will be granted. The Action Taken forms will be mailed to the applicant and will be on file with the Town Clerk. In addition the Planning Board, Building Inspector, and Zoning Enforcement Officer will receive a copy for their file and records.

New Business:

New Applications:

None

Resignation of Secretary:

A letter has been received from Teri, it is notification that she will not ask to be reappointed in January. Jeff will speak to Vana to advertise for a replacement.

Old Business:

Referral to the Comp Plan Review Board:

Jeff announced to the ZBA members that a letter has been sent to the Town Board recommending both Frank and Mike to be part of this committee.

Adjournment:

Frank made a motion to adjourn this meeting, this was seconded by Mike . The motion carried. The meeting adjourned at 8:30 PM.

The next meeting will be held on Thursday, October 27, 2011, at 7:00 PM.

Respectfully Submitted,

Theresa A Traver, Recording Secretary