



COPAKE PLANNING BOARD

SEPTEMBER 6, 2018

MINUTES

DRAFT

Please note that all referenced attachments, comprising 23 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 7:02 p.m. by Bob Haight, Chair. Also present were Julie Cohen, Chris Grant, Marcia Becker, and Jon Urban. Ed Sawchuk and Steve Savarese were excused. Attorney Ken Dow and Town Board Liaison Richard Wolf were also present. Lisa DeConti was present to record the Minutes.

ZONING BOARD OF APPEALS – Referrals

2018-20 ZBA REFERRAL – LOUIS & PATRICIA JOHNSONS – Birch Hill Road [Copake Lake]

- Building Permit Denial dated August 13, 2018
- ZBA Request for Area Variance Dated August 18, 2018
- Survey
- Letter from Home Install Pro dated August 9, 2018
- Invoice from Home Depot for Shed
- Pictures

Louis and Patricia Johnsons are before the ZBA for the addition of a ten by sixteen foot (10' x 16') shed that falls within the set-backs.

Attorney Dow clarified that an additional shed is acceptable under the new Town Code however only one is allowed to be within the set-backs.

It was decided that a letter be written to the ZBA advising them that the Board recommends that the second shed not be any closer to the property line than the existing shed as it increases the non-conformity.

2018-21 ZBA REFERRAL – HILLARY & JANET NACHBAR HARROLD – Golf Course Road [Copake Lake]

- Building Permit Denial dated August 22, 2018
- ZBA Request for Area Variance dated August 21, 2018
- Letter of Agency dated August 23, 2018
- Elevations
- Pictures

Linda Chernewsky appeared representing Hillary and Janet Nachbar Harrold who wish to put a four foot (4') addition on their house where there is presently an existing deck. Ms. Chernewsky acknowledged that the applicant is before the ZBA for development within one-hundred feet (100') of a water body and an increase in the non-conformity.

Mr. Haight made note of the fact that he had been told that this application needed to go to the County. Ms. Chernewsky clarified that after measurements were taken it was acknowledged that there was enough distance not to require County Planning Board approval.

Ms. Chernewsky explained to the Board that the addition will be slightly shorter than the existing deck structure and the deck will be made smaller and not extended. It was noted that the non-conformity is being increased due to the height of the roof and the lot coverage is not being altered by any significant amount.

After discussion it was discovered that the existing septic system is a one-thousand (1,000) gallon concrete tank which is undersized for the existing structure.

There was a question under the new Town Code as to whether this application needed Site Plan Approval or not as it was only referred to the ZBA for a variance. It was decided that this is just a ZBA decision.

A letter will be written to the ZBA recommending that they receive a stamped letter from an engineer stating that the septic system is in good working order. Ms. Chernewsky will submit a stamped letter from the engineer.

PUBLIC HEARING

**2017-38 SITE PLAN REVIEW – GRJH INC. – State Route 23 [Craryville]
(Open since November 2, 2017)**

- Letter to Joe Visconti from Barbara and Steve Smith
- E-mail from Franny Alexander dated August 27, 2018

- E-mail from Gabrielle Tessler dated August 29, 2018
- E-mail from Steve Smith dated August 31, 2018
- E-mail from Neil Costa dated September 1, 2018
- E-mail from Jamie Johnson dated September 5, 2018
- E-mail from Pym Farm Dated September 5, 2018
- E-mail from Pamela Patterson dated September 6, 2018
- E-mail from Francesca DiMattio dated September 6, 2018
- E-mail from Ischwan Joergrems dated September 6, 2018

There were still outstanding items which needed to be finalized so this application was held over until next month's meeting. However, there were a number of area residents present so Mr. Haight proceeded with the Public Hearing inasmuch as comments were directed to the Board and not the applicant. Mr. Haight brought up the fact that comments were made at last month's meeting regarding a Public Notice not being posted for the Public Hearing. He pointed out that this application has been ongoing for the past year and Public Notices were posted when the Public Hearing was first open. He also made note of the fact that the Board followed the proper procedure as they were required to do.

Mr. Haight advised the residents that they will be give two (2) minutes to make their comments and he asked that they not repeat what they commented on at past meetings. Mr. Haight explained that anyone wanting to comment of the fact that they were against a gas station should have made these comments to the ZBA at their Public Hearing when the applicant was before them for the Special Use permit. He noted that the Planning Board is conducting a Site Plan Review and whether someone is in favor of or not in favor of a gas station is not relevant to the Site Plan process. Mr. Haight did make note of the fact that the ZBA has already granted the applicant a Special Use Permit allowing a gas station on the site. He welcomed any comments relevant to the site itself.

Hillsdale Resident PAUL SULLIVAN ... Mr. Sullivan was concerned that there would be an increase in traffic and an increase in trucks. He also had concerns that this would be a truck stop. Mr. Haight advised that there are no tractor trailer parking spaces on the application however there will be a tractor trailer making fuel deliveries. He also had pollution and noise concerns.

Copake Falls Resident DOREEN RAPAPORT... Ms. Rapaport questioned whether this was a 'done deal' inasmuch as a Special Use Permit was already granted.

Hillsdale Resident SUSAN SCHECK... Ms. Scheck had concerns about traffic turning out from 7A and/or Craryville Road onto Route 23 and felt any increase in traffic would be problematic.

Area Resident ... An area resident who wished to remain anonymous wanted to note that the project has not been approved as yet and she remarked that under SEQRA it is a state jurisdiction and not a local jurisdiction and questioned whether the SEQRA was followed properly by the ZBA. She also made note of the fact that DOT and DOH approval has not

yet been granted. Mr. Haight clarified that the Site Plan has not been approved however a Special Use Permit has already been granted for a gas station/convenience store and a SEQRA was done by the ZBA. Mr. Urban explained that the Planning Board's process is to determine whether the site is properly applicable to what was already approved by the ZBA and the process includes safety, traffic and environmental issues.

Hillsdale Resident ROSE GARTEN... Mr. Garten questioned whether a traffic study was done and was advised that one has been and has been submitted to the DOT.

Hillsdale Resident AMY DAVIDSON ... Ms. Davidson had issue with the way the SEQRA was performed by the ZBA and the fact that only abutting neighbors were notified of the project. She also had issue with the size and scale of the project and feels it will be a huge impact on the Town of Craryville.

Hillsdale Resident DAN ... Had issue with the time of the week and time of season the traffic study was done and the number of diesel pumps proposed. He questioned whether there are any plans for enhanced traffic features such as reduced speeds or traffic lights.

Copake Falls Resident DOREEN RAPAPORT... Ms. Rapaport asked the Board what residents can do to stop the project. Mr. Grant advised her that the Planning Board has a limited scope regarding the project and residents can express their concerns on what the Board can asked to mitigate some of their concerns. Ms. Rapaport asked where residents can go to have their concerns addressed. Supervisor Jeff Nayer advised her that she can consult an attorney. Mr. Haight explained that some of the residents went before the Town Board to ask for a traffic light and the Town consulted the NYS DOT who required a traffic study be done by the owners. He also noted that the DOT is still reviewing this.

Hillsdale Resident PAUL SULLIVAN... Mr. Sullivan questioned whether there are any plans for enhanced traffic features such as reduced speeds or traffic lights. He also noted that there will be an increase in traffic with the former Random Harvest re-opening. Supervisor Nayer reiterated that the Town contacted the NYS DOT regarding a traffic study and was informed that the former Random Harvest should have also had a traffic study performed which was not done. He advised that any concerns can be addressed to Joe Visconte of the Department of Transportation.

Attorney KEN DOW ... Attorney Dow addressed the audience and explained that within the scope of what the Board can review they can determine that certain conditions have to be met before they can proceed. If the applicant cannot meet those conditions the project can be denied and the applicant cannot move forward. He explained that the ZBA fundamentally approved a Special Use permit which gives the applicant conceptual right to have a service station/convenience store on the site and the Planning Board will look at the site and whatever is within their purview and consider the issues they have authority to mitigate and tell the applicant what they need to do to meet the standards. If the applicant does not meet the standards the project can be denied however the Board can only work within the scope of their jurisdiction. He did point out that the Planning Board cannot go back and pull the fundamental Special Use Permit.

Area Resident ... An area resident questioned what the Board's next step was. Mr. Haight explained that they have received Board of Health approval and are waiting for approval from the Department of Transportation and then a complete package will be sent to the Columbia County Planning Board for their approval. Mr. Grant did note that any comments that have to do with the site itself will be incorporated into the Board's site plan considerations.

Hillsdale Resident AMY DAVIDSON ... Ms. Davidson suggested that the scale of the project be looked at very carefully. She also had concerns regarding the number of diesel pumps.

Copake Resident JANE BIRNBAUM... Ms. Birnbaum also had issue with the scale of the project and questioned whether any electric charging stations are being considered. She asked whether significant screening has been addressed as well as an entrance off of Route 7 and another off of Route 23. She questioned how the project can be made more attractive and whether lighting can be mitigated so as not to light up the whole scope of the project. Inasmuch as seems that the project will be going through she questioned what can be done to make it appropriate and appealing.

Hillsdale Resident ROSE GARTEN... Mr. Garten asked whether the residence across the street has been considered and was advised by Mr. Haight that the Board has taken this into consideration. He also had lighting concerns.

Area Resident ... An area resident questioned whether the Board can say this project is not appropriate for this site. Mr. Grant explained that once the Special Use Permit has been approved the Board cannot deny a project on those grounds. Attorney Dow reinforced this and advised the residents that the Planning Board does not have the authority to say the applicant cannot proceed with the project and what they can require is that the applicant proceed within the required parameters and can only deny the project if the applicant does not do this. What the courts say is that when a Special Use Permit is given, a legislative decision has been made as a municipality that this is considered suitable in this location. A question arose as to whether the County can deny the project inasmuch as the Town cannot. Attorney Dow advised that this is not within the County's purview either.

Hillsdale Resident AMY DAVIDSON ... Ms. Davidson asked if the project could be made more accessible. Ms. Cohen acknowledged that the website has agendas and minutes that can be reviewed. Mr. Haight made note of the fact that he has taken time off from his job to meet with an area resident so that they would be able to research the project. He made note of the fact that this project has been quite accessible to the public and if anyone made a request they have all been addressed.

Copake Resident TOM THIES... Mr. Thies made note of the fact that there were a large number of cars at the former Random Harvest Open House recently. He questioned what the basis of the scale of this project is and asked if the Board has oversight on the scale of the project. Mr. Haight did acknowledge that this is taken into consideration and noted that the plans have been changed several times on comments from the Board and residents.

Town Supervisor JEFF NAYER ... Supervisor Nayer wanted to acknowledge that his Boards and office staff have been very cooperative with any requests regarding this project. Supervisor Nayer also wanted to clarify that the addition of diesel pumps are not solely for the use of tractor trailers as cars, pick-up trucks as well as farm and landscape equipment also run on diesel fuel.

Mr. Haight closed the Public Hearing for the evening but made note of the fact that it remained open for the next meeting which will be held the first Thursday in October at 7 pm.

SUBDIVISIONS/SITE PLANS

2018-16 SITE PLAN REVIEW – CARROL ALLEN / LOTUS SOLAR – Flower Top Land [Copake]

- Application for Site Plan Review dated June 30, 2018
- Building Permit Denial dated August 21, 2018
- Acknowledgement from Copake Fire District
- Certificate of Workers' Compensation Insurance
- Certificate of Insurance Coverage
- Certificate of Liability Insurance
- Letter of Agency dated June 7, 2018
- Equipment Information
- Site Design

Kyle Montag appeared before the Board representing Carrol Allen and Lotus Solar. He explained that the applicant wishes to install a ground mounted 8.6 kw Solar System in a well forested area screened by trees which meet all the set-backs and will be eight feet (8') feet tall.

Ms. Becker noted that this is referred to the Board by the Building Inspector for a modified Site Plan Review as required by the new Town Code. 232-16.12C [*Requirements for Small-Scale Solar Energy Systems*]. Ms. Cohen noted that a Public Hearing is not required for this application and referred to Town Code 232-16.12C8.

Mr. Haight suggested the applicant show where the panels will be located. The applicant provided these documents.

The section of the Town Code that applied to this application was reviewed. Ms. Becker acknowledged that the Fire Department was notified that Solar Panels are being added to the site.

After discussion on a motion made by Mr. Haight and seconded by Mr. Grant the Board voted unanimously to approve the Site Plan for Carrol Allen and Lotus Solar from a Site Map dated September 6, 2018.

Mr. Haight will stamp the plans once received by the applicant.

**2018-17 MINOR SUBDIVISION – JOE FLOOD / J&J TWIN OAK LLC– Route 22
& Yonderview Road [Copake]**

- Site Plan dated August 27, 2018

Joe Flood appeared before the Board explaining that he would like to do a four (4) lot subdivision from the original one-hundred and seventy-nine (179) acre parcel.

He explained that he would like to keep four (4) acres with his house, subdivide off his shop, an addition of three (3) acres to the existing eighteen (18) acre parcel which is presently being farmed which will leave the remaining acreage of the existing parcel.

Mr. Flood made note of the fact that the last subdivision was done five (5) years ago on September 7, 2013 and as per the new Town Code pre-existing subdivisions are not taken into consideration. Attorney Dow acknowledged that according to the new Town Code four (4) additional lots can be subdivided from the original parcel for a total of five (5) lots.

After discussion it was noted that Mr. Flood had more than four parcels as some were non-contiguous. Mr. Flood will rearrange his subdivisions for a total of not more than four (4) lots and return next month.

2018-18 SITE PLAN REVIEW – CATAMOUNT SKI ARES – Route 23 [Copake]

- Application for Site Plan Review
- Proposed Zip-Tour Design

Pat Prendergast appeared before the Board with John Schaffer one of the new owners of Catamount Ski Area for the addition of a Zip Line. Mr. Prendergast advised the Board that he went to see the Building Inspector who was unsure as to whether a Site Plan was needed for this or not. Mr. Prendergast explained that there will be two (2) zip lines, one which will be short and the other which will be longer.

Mr. Grant asked what state permits are required and Mr. Schaffer acknowledged that the only permit needed is the Department of Health Amusement License and the NYS Department of Parks will have to sign off on the first Zip Line. Mr. Grant noted that the Board can't approve the Site Plan without the permits. Mr. Schaffer explained that the inspections cannot take place until the Zip Line is constructed.

A lengthy discussion ensued regarding how this should be handled under the new Town Zoning Code. Attorney Dow noted that this could be considered an Accessory to a Recreational Use however an accessory use needs to be consistent with the Recreational Business. Attorney Dow felt it was reasonable to consider this an Accessory Use in this case. Mr. Grant questioned whether a Special Use Permit from the ZBA is required. Attorney Dow also noted that the Board might also be able to consider a Less Intensive Review. Mr. Grant objected to proceeding inasmuch as there was no denial from the Building Inspector.

Mr. Schaffer explained that he has a short window in which to begin this project and would have to wait until August of next year if he cannot move forward at this time. Mr. Haight asked Attorney Dow whether the Board could approve the application subject to the Building Inspector's denial. Mr. Haight suggested having a Special Meeting to move forward with this project. Mr. Haight set a Special Meeting for September 22nd.

Ms. Becker made note of the fact that it is already a permitted use in the district and is an accessory structure to the existing recreational business so under the Less Intensive Review and Waiver Requirements the Board may be able to proceed.

Attorney Dow did not see a problem with proceeding without the Building Denial inasmuch as the alternative to the Site Plan is not having to have one in the first place. Ms. Cohen referred to Town Code 232-21B which reads: *Prior to the issuance of a building permit for a business, commercial, industrial, or general use, or for any multifamily dwelling, or for any structure greater than 3,500 usable square feet of floor space, including agricultural buildings, the Building Inspector shall require site plan approval pursuant to this section. Some agricultural uses may undergo a modified site plan review and approval pursuant to Section 232-21(H)(4)* and suggested that this might be the basis for the Building Denial and Referral to the Planning Board.

Attorney Dow reiterated that he did not see a problem with proceeding with the Site Plan Review as the other option is the applicant not needing one at all. Mr. Haight asked if the Board was in favor of proceeding. Everyone was in favor except Mr. Grant. Ms. Becker noted that there was a verbal referral from the Building Inspector and she had no objection with proceeding.

The Check List was reviewed. Ms. Becker asked what permits from the State or County are required and requested copies of them. Mr. Schaffer explained that the required permits cannot be given until after the project was constructed as it cannot be inspected until then. Ms. Becker requested copies of the permits once they are received.

Attorney Dow advised the Board that this application needs to go to the County Planning Board. Ms. DeConti will drop the application off at the County Planning Board office in the morning. A special meeting will be held on September 22nd at 10 am to review this application.

MINUTES

On a motion made by Ms. Becker and seconded by Ms. Cohen the Board voted unanimously to approve the minutes of the August 2, 2018 meeting.

ADMINISTRATIVE

FRANK AND MARCIA PETEROY: A request was received from Frank Peteroy to leave his application open.

13 LACKAWANNA PROPERTIES: A letter was received from Frank Peteroy on behalf of Copake Valley Farm to leave his application open.

CARRY OVER

The following matters were carried over to the next meeting:

- 2017-31 SITE PLAN REVIEW – 13 LACKAWANNA PROPERTIES [BUILDING #1] – Lackawanna Road [Copake]**
- 2017-32 SITE PLAN REVIEW – 13 LACKAWANNA PROPERTIES [BUILDING #2] – Lackawanna Road [Copake]**
- 2017-41 BLA/MINOR SUBDIVISION – FRANK AND MARCIA PETEROY – Route 22 & Old Highway 5645 [Copake]**
- 2017-38 SITE PLAN REVIEW – GRJH INC. – State Route 23 [Craryville]**
- 2018-11 MINOR SUBDIVISION – COPAKE LAKE GOLF, LLC – Golf Course Road [CopakeLake]**

ADJOURNMENT

There being no further business, on a motion made by Mr. Haight and seconded by Ms. Becker, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 9:40 p.m.

Bob Haight, Chair

Please note that all referenced attachments, comprising 23 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

LOUIS & PATRICIA JOHNSON

August 18, 2018 Request for Area Variance (2)
August 18, 2018 Building Permit Denial (2)

HILLARY & JANET NACHBAR HARROLD

August 22, 2018 Building Permit Denial (2)
August 21, 2018 Request for Area Variance (2)

GRJH INC. PUBLIC HEARING

August 27, 2018 Alexander to CPB (1)
August 29, 2018 Tessler/Reilly to CPB (2)
August 31, 2018 Smith to CPB (1)
September 1, 2018 Costa to CPB (1)
September 5, 2018 Johnson to CPB (1)
September 5, 2018 Howe-Jones/Johnson to CPB (1)
September 6, 2018 Paterson to CPB (1)
September 6, 2018 DiMattio to CPB (1)
September 6, 2018 Joergens to CPB (1)

CARROL ALLEN

June 30, 2018 Application for Site Plan Review (1)
June 21, 2018 Building Permit Denial (2)
Copake Fire District to Allen (1)

CATAMOUNT SKI AREA

September 6, 2018 Application for Site Plan Review (1)