

**Town of Copake
Zoning Board of Appeals**

Draft

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Meeting Minutes of October 24, 2019
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The meeting of the Zoning Board of Appeals of the Town of Copake was held on, October 24, 2019 at the Copake Town Hall, 230 Mountain View Road, Copake, NY.

1) Roll call:

The meeting was called to order at 7:00 PM by Jon Strom ZBA Chairman.

Present were; Jon Strom, Michael DiPeri, Thomas Goldsworthy and Dionisio Fontana.

Jeffrey Judd was excused.

Also attending were; Town Board Liaison Stosh Gansowski and Town Attorney Ken Dow.

Veronique Fabio recorded the minutes.

An audience of about 25 people was present including Town Supervisor Jeff Nayer, and Planning Board Chairman Bob Haight.

2) Reading and approval of the minutes:

Jon Strom asked if the members had read the minutes of September 26, 2019.

There were some typos, therefor the September minutes will be corrected and review kept for the next meeting.

3) Correspondence:

The following correspondence was acknowledged and will be reviewed as the meeting goes.

10-2-19 Jeffrey Judd cannot attend the October meeting.

10-2-19 Michael DiPeri cannot attend the December meeting

10-9-19 from Planning Board: Meeting was canceled, no referrals.

10-22-19 from Christie Billeci in ref. to 2019-11, Platt project

10-23-19 from Steve Sanborn in ref. to 2019-14, Copake Camping Resort

4) New Applications:

None

5) Public Hearings:

1) 2019-11. 95 Lake Shore Dr. Taconic Shores. Alice & Buddy Platt,
Tax Map 176.3-2-55
Project consists of a 22’x 18.3’ single story addition with a new bedroom and a
handicapped accessible bathroom.

Alice and Buddy Platt were present; Architect Christie Billeci was unable to attend
the meeting.

*~ Jon Strom asked for a motion to open the public hearing, Michael DiPeri made
the motion, Thomas Goldsworthy seconded, all members agreed.*

~ Jon Strom acknowledged Christie Billeci’s response to the ZBA requests; email
dated 10-22-19 regarding: 1) The location of the septic and leach field,
2) The need for a variance to Robinson pond.

~ Alice Platt explained that she and her husband would like to build an 18.3” x 22’
addition to the right side of their existing house. The one story addition will
contain a bedroom and a handicapped accessible bathroom. She added that a full
height (8’) basement will be dug out under that addition.

~ Jon Strom asked if there was anyone in the audience that wanted to comment on
the application.

Members did not have any more questions.

The variances needed are as follow;

- 1) Relief from 232-20,B,2,a,2 (modification of a non-conforming structure.
- 2) A right side yard variance of 18’.
- 3) Relief from development within 150’ of Robinson Pond.

*~ Jon Strom asked for a motion to close the public hearing, Michael DiPeri made
the motion, Dionisio Fontana seconded, all agreed.*

Jon Strom *indicated that the ZBA had 62 days before rendering a decision, but he believed that the members will be able to make a decision tonight.*

He 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: 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

Tonight the Zoning Board of Appeals will be voting on the variances previously mentioned.

Vote:

Dionisio Fontana: YES Jon Strom: YES Michael DiPeri: YES

Tom Goldsworthy: YES

Variances are granted.

2) 2019-14 Copake Camping Resort. 2236 C.Rt. 7.

Request for a variance to operate the campground 10 months out the year.

Present were; Attorney Alex Betke, owner of the Campground David Zweig and Engineer Rich Andreassen.

~ Jon Strom asked for a motion to open the public hearing, Michael DiPeri made the motion, Thomas Goldsworthy seconded, all members agreed.

~ Jon Strom read 3 letters from abutters; Stephen Sanborn, Sherwood & Tonia McCagg and from Louise Pillai, that are strongly opposed to the 10 months operation proposal.

~ Engineer Rich Andreassen talked about the proposal to operate 22 sites (16 RV sites and 6 cabins) for 10 months out the year. He explained that it would be beneficial to the people visiting the area to have housing options; the campground does get lots of requests outside the seasonal period.

~ David Zweig added that the campground would be closed in November and December. The increase of traffic through the town during the rest to the year would be beneficial to local businesses.

~ Tom Goldsworthy asked for estimates on the numbers of campers.

~ David Zweig responded that it is hard to predict but a half to a dozen of cabins occupied could be a reasonable estimate.

~ Jon Strom read the definition of “Campground” from the Copake Zoning Code. “Any parcel or tract of land including buildings or other structures, under the control of any person, where five or more campsites are available for temporary or seasonal overnight occupancy. Seasonal is to be defined as six months, subject to obtaining an area variance from the Zoning Board of Appeals.”

Jon Strom added that 10 months operation is no longer in the spirit of season.

~ Tom Goldsworthy asked if the number of sites used might increase.

~ Rich Andreassen answered that only the sites that are equipped with “winter water” can be used.

~ Attorney Alex Betke suggested that they could give the town a list of the sites offered outside the 6 months seasonal period.

~ Dionisio Fontana asked if consideration to reduce the number of sites offered beyond the season could be explored.

~ Attorney Alex Betke responded that they would be open to that.

- ~ David Zweig said that the noise and light issues were addressed.
- ~ Jon Strom noted that Mr. Sanborn does not seem to feel that way even though it appears that the campground tried to remediate the light issues.
- ~ Attorney Ken Dow suggested that the public hearing be kept open as there is a substantial memo from the last applicant's request and it should be very carefully reviewed.

Public Hearing remains open.

3) 2019-13. Save Craryville. Applicants are appealing the town of Copake CEO's decision in ref. to GRJH, challenging the issue of the validity of the Special Use Permit that was granted by the ZBA in 2016.

~ Jon Strom asked for a motion to open the public hearing, Michael DiPeri made the motion, Thomas Goldsworthy seconded, all members agreed.

Presenting the application; Jamie Carano and attorney Dan Richmond of Zarin & Steinmetz law firm. They are representing 9 aggrieved parties as follow; Irene Sax, Jim Cox Chambers of FH Farms, Hillary Melville of Homestead Market, Peter Bottjer, Roberta Linding Darling, Timothy Heffernan, William Rasweiler Angus Farm, and Michael & Carol Pallen.

~ Jon Strom indicated that some of the aggrieved parties were allowed to express themselves at the September meeting.

~ Ken Dow noted that there was no need to re-hear every one individually.

Mr. Bottjer is the one party that is close to the location of the project and his well is shallow.

~ Attorney Dan Richmond started his presentation.

He stated that on July 2019 an incorrect determination by the Copake Code Enforcer was made, that the Special Use Permit is still valid. He reads the Copake Zoning Code 232-23 F,

“Expiration and Termination of Special Use Permit. A special use permit shall expire and become void one (1) year after approval unless the applicant shall have commenced and substantially proceeded with the use.”

He cited CEO Lee Heim’s letter dated July 7, 2019 *“I determine that the applicant has substantially proceeded with the use through their continued effort to get the Site Plan approved. The Special Use Permit has not expired.”*

~ Dan Richmond noted that only the Town Board can modify the wording of the Zoning Code and GRJH has not commenced to build. The Special Use Permit was issued on December 2016, no effort has been done by GRJH to try to renew the permit and no construction has started.

~ Bob Haigh argued that “commencement” does not mean necessarily digging foundation or erecting a brick wall, but GRJH has been diligently pursuing obtaining a Site Plan approval from the Planning Board.

~ Jon Strom agreed to that statement and added that substantial work has been done by GRJH on the project to the requests of the Save Craryville group.

~ Dan Richmond stated that the determination by the Copake Code Enforcer is wrong, and that a new application and SEQRA should be done. He added that he does not agree with town attorney Ken Dow’s opinion that the ZBA does not have the authority to rescind its negative declaration on the 2016 SEQRA.

~ Ken Dow redirected the focus to the determination on the expiration or not of the Special Use Permit. He cited an appellate division case law that held that the clock on Special Use Permits starts upon issuance of the Site Plan, not on the issuance of the permit itself.

There was a discussion between Ken Dow and Dan Richmond on the weight that should be given to cases from the Appellate Division in the 3rd Department and the 4th Department.

~ Jon Strom noted that the reason GRJH has not started building is simply because it does not have a Site Plan approved yet. Construction cannot start until Site Plan approval is obtained.

~ Bob Haigh indicated that he was on the board that worked on the new Zoning Code that came in effect July 2018. He cited an example where a Special Use Permit can be obtained and a perk test is necessary. Perk tests cannot be done in the middle of winter, the test will have to wait until the ground thaws, it does not mean that the project was abandoned; brick and mortar don't determine commencement.

~ Comments from the audience;

~ Paul Sullivan said that if GRJH was serious about their project they would have been diligent to renew the Special Use Permit.

~ Tim Stockberry from Craryville Rd said that the language in the code is clear; the permit should have been extended, it was not, therefore it has expired now. He is disappointed.

~ Blanche Mackey stated that she already knew which way certain ZBA members will vote on this issue.

~ Jon Strom responded that he comes to the ZBA meetings without preconceived opinions and he listens to the presentations. He has changed his position in the past after applicants and/or abutters offered convincing arguments. GRJH made the efforts to get the project started for the past 3 years. In 2016 when the ZBA reviewed their application it seemed to make sense for the project to take place, the location is in a commercial/residential district. The lot has been used for commercial activities in the past. The ZBA has to review if the CEO's determination is correct or not.

~ Michael DiPeri stated that the board does not have predetermined judgments or sides. The ZBA has no vested interests in having a gas station there. All the documents and information on the project that the ZBA asked for was provided by GRJH back in 2015. Addressing himself to the audience he noted that the ZBA is not against anyone, just sticking to the facts, looking for middle ground. He asked that the applicants show respect for this board.

~ In the audience, Linda T. said that the Town Attorney Ken Dow was giving only one sided law cases. Shouldn't he give both sides of the law?

~ Ken Dow responded that he is just trying to advise the board and protect the town from a law suit. Popular or not he has found law cases that support the Code Enforcer's determination. He has no personal interests in having a gas station built

there.

~ Cornelius Hoss interjected that he does not want neutral ZBA members. The gas station will possibly poison the ground water.

~ Tom Goldsworthy had a question for Ken Dow on the timing for Special Use Permits and if Ken Dow had found any law cases that stated that construction had to take place to determine commencement.

~ Ken Dow noted that back in 2016 under the old Zoning Code there was no limitation in time for the validity of a Special Use Permit; GRJH acquired the Special Use Permit under the old code. The new code gives one year to the permit validity; however the clock does not start until the Planning Board Site Plan is approved.

~ David Sandbeck a Hillsdale resident noted that he works for NYS and oversees construction projects. The federal government when there is a construction project a mile stone in the commencement of a project is never determined by a Site Plan approval, but by the actual beginning of the construction or a substantial financial investment towards the project.

~ Keith Benansky owns the lot directly across the project location. He received a registered letter from the ZBA for the hearing. That is the first time he was notified of anything. His questions could not be answered by the ZBA and should be directed to the Planning Board.

~ Jon Strom asked for a motion to close the public hearing, Michael DiPeri Made the motion, Dionisio Fontana seconded, all members agreed.

Most of the people in the audience left the meeting room at that point. ~

~ Jon Strom reminded everyone that the meeting was still in session.

~ Tom Goldsworthy recapped that under the old code unless a project is abandoned it will not expire. GRJH has been diligent in pursuing the site plan approval.

~ Dionisio Fontana noted that GRJH did not abandon the project; they cannot go ahead with construction until they have a Site Plan approval, their hands are tied.

After more information was shared by attorney Ken Dow with the ZBA members, they decided that they were ready to vote on the issue.

The Zoning Board members have to make a determination if the permit is expired.

Vote: Dionisio Fontana: NO Jon Strom: NO Micheal DiPeri: NO

Tom Golsdworthy: NO

Ken Dow will prepare a memorandum to attach to the Action Taken Form.

7: Internal Business:

Reminder of meeting dates ; Nov. 21 and Dec. 19

The meeting was adjourned at 9:05 on a motion by Tom Goldsworthy, seconded by Michael DiPeri and approved by all members.

Respectfully submitted.
Veronique Fabio.