

**Town of Copake  
Zoning Board of Appeals  
Minutes – September 25, 2008**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, September 25, 2008, at the Copake Town Office, 230 Mountain View Road, Copake, NY. Committee Chair, Stanley Gansowski called the meeting to order at 7 PM.

Introductions began the meeting; roll was called with the following ZBA members present: Stanley (Stosh) Gansowski, Jeff Nayer, Frank Peteroy, Leslie Wood and alternate, Louis Kibler. Shawn McClain was not present. Attorney Lawrence Howard was also present.

An audience of approximately 8 were present, including Town Board Members, Bob Sacks and Linda Gabaccia; and Zoning Enforcement Officer, Ed Ferratto.

**Minutes:**

Jeff made a motion to approve the minutes of August 28, 2008, this was seconded by Frank. The motion carried, unanimously.

**Public Hearings:**

Jeff made a motion to open the public hearing, seconded by Frank, Motion carried unanimously.

**Application # 2008-09, Harriett & Douglas Ziegler, 38 S W Colony Road, Copake Lake, Area Variance, addition of a breezeway and garage.** Ms. Jaclyn Tyler, from JT Drafting & Design, as well as the applicants, Douglas & Harriett Ziegler were present and came forward to answer questions and review the plans.

Jeff informed the board that he had been present at the Planning Board meeting, at which the Ziegler's application had been reviewed for site plan. The planning Board approved the site plan stating that if a

breezeway is attached to the garage and house it becomes part of the main structure, however there was the issue of the 25% of lot coverage. The non-buildable portion includes 100 feet from the lake and the driveway. Attorney Howard asked the board which zone, R-2, he instructed that footnote only applies to the 5,000 sq ft. minimum. Non-conforming means it doesn't meet the size for the existing zone, Code 232-24.B.2a.2, *a non-conforming building or structure shall not be added to, enlarged, reduced or altered in any way, which increases its nonconformity*. It was also argued that because the lot was existing prior to zoning it should be considered conforming, to which Attorney Howard referred to Code 232-24.C.5a, *such deemed conformance shall expire two years after the filing...* Ms. Tyler asked the board questions regarding how the 25% coverage was calculated. A discussion continued as to the buildable portion, and non-buildable portion; the minimum square footage for the zone, conforming and non-conforming, and whether this applies to this application. It was agreed that this was a unique situation; since most of the existing building, (built prior to zoning), and because of the parcel's shape, terrain, and proximity to the lake, was constructed within the non-buildable portion of the lot.

Code 232-24.C.2c, *it complies with all other requirements for the district...*, the proposed plan could not meet the set backs. Attorney Howard reminded the group that this doesn't mean you can't grant a variance; the criteria would be the impact of the density of the area. He referred the group to the definitions Code 232-3.A, Buildable Land; *That portion of a lot, which is suitable for building structures and locating septic disposal facilities excluding wetlands and watercourses, slopes exceeding 30% and flood hazard areas*. After much discussion, and some frustration, Jeff reminded the group to address the task at hand, what variances do they need; setbacks and lot coverage. The group then began to determine calculations of the coverage, the house, proposed breezeway, and garage footprint equate to less than 25% of the lot coverage. Stosh again called the group to order, Leslie apologized for the confusion but expressed the importance of getting it right. The Board determined that the set backs were the only issue that needed to be addressed.

When asked about the set backs, Ms. Tyler answered that the garage would meet the side set backs, the rear and front set backs, but not the 100 ft lake set back. Leslie questioned the DEC approval for the proposed building, but was reminded that it was still a set back

according to Copake Zoning Law, even though the DEC had approved the proposed building.

Stosh then asked if anyone from the audience wished to speak, no one came forward, he then asked if any negative response came forward from the public notices, none, all were positive and supportive. Each of the Board members were then asked for their comments, everyone responded positively. The group agreed that the garage would be less invasive to the environment and land, than the additions to the house, with a poured concrete floor the possibility of contamination to the lake would be reduced, (spillage of any petroleum products could be contained better on concrete than on a dirt driveway). The DEC, Planning Board, and neighbors were all in support. Jeff asked about the camper that was parked in front of the house, since this was a violation of Town Code 232-15.

Leslie made a motion to approve the application and to close the public hearing, seconded by Frank. The motion carried, unanimously.

Leslie made a motion to open the public hearing, seconded by Jeff. The motion carried, unanimously.

Application: 2008-10, Morris Ordover & Sheila Moss, 37 Cove Road, Area Variance, to build a garage. Mr. Ordover came forward to answer questions. He began by passing out copies of his survey map for all to review. He explained that a garage would be added to the house abutting a screened in porch. The proposed garage would be within 10 feet of the property line, which is his neighbor's driveway. House was built prior to zoning with deed restrictions. Leslie asked him about the steepness of the neighbor's driveway and suggested that he consider as a safety precaution to leave some of the trees so that should someone begin to slide down the driveway, they will not go into his garage. He said they would not be removing any other trees; those that are standing will remain. The driveway has been in use for about 40 years, and no one will be able to build further on the other side. They will be purchasing property from Barry Ross to enable him to build a garage and have a turn around.

Stosh asked if anyone in the audience wished to speak to this matter, with no one coming forward, he continued to ask if there had been any responses received pro or con in regard to the public notices.

**Nothing has been received. Stosh then asked the board members if they had any further questions, hearing none, he asked for a motion.**

**Leslie made a motion to approve the application and to close the public hearing, seconded by Jeff. Motion carried, unanimously.**

**New Business:**

**New Applications:**

**None**

**Correspondence:**

**Jeff spoke of the Web Mail that had been received, all is current to this date and agreed that as items come in of importance he will forward them to the other members of the committee, and will remain as part of the agenda as correspondence.**

**Tape Recorder:**

**Discussion about the use of the Planning Board's Tape Recorder, it could be used, however if meetings are to be taped, the public has to have access to these recordings. It was determined that the ZBA has money in their budget to purchase their own, however we need to make sure that the machine purchased will be able to make a copy of recordings and has a microphone. Jeff will assist with purchasing a digital computer for recording minutes also so they can be down loaded onto a thumb drive and E-mailed. Bob Sacks has volunteered to assist with the purchase to make sure the new machine is compatible with the office computer. Teri to ask Vana about Staples Account to Purchase, and how long recordings need to be kept. She will also need some time to learn to operate this new equipment. The price from Staples was approximately \$ 200. With all in agreement, a motion was made by Jeff, and seconded by Leslie to purchase a machine to assist with the minutes. Motion carried unanimously.**

**Lawrence Howard, Attorney:**

**Attorney Howard was welcomed to the meeting by Stosh. He was invited to the meeting for his input on a discussion of conforming and nonconforming lots. He was asked for a clarification to assist Board Members on this very important issue. Mr. Howard opened the discussion by stating that there is no state law directly regulating non conforming uses, lots, dimensions, so it does not conform with the code, there are tons of case law that people have been litigating ever since the idea ever came up, it goes back to grand-fathering, people are confusing the words, example: if you have a house and it met the rules when it was created but then the rules have changed, you are allowed to keep your house but it is now non-conforming, it doesn't conform to the new rules that are now in place. When the code was up-dated it asks for something different than what is on the ground. This could be the lot size, setbacks, dimensions or the use. It could allow the use, it is grand-fathered, it can stay, but it is no longer allowed in that zone any more. It is now non-conforming. Each time the code is up-dated, by definition this type of non-conformities are created. A variance needs to be approved for any changes to the existing, as per the new rules for that zone. One can keep the non-conformity, but one cannot increase its non-conformity.**

**Leslie brought up the issue of the measurement of height, the requirement is different for non-conforming and conforming, and according to the footnotes the measurement is obtained differently. How do you determine height, if you measure differently? It is confusing, and we would like it to be the same for both.**

**Lawrence reminded ZBA that the footnotes are for the minimums, you have the power to grant variances, there are in your code different rules for different zones.**

**Jeff, Frank, and Leslie all expressed their concern with this, since it was up to the ZBA to make a decision to determine if variances would be allowed or not. Uniformity, fairness, equitability are a priority. Frank stated that municipal law required that enforcement was to be uniform through out the district for which they are in. He continued with his concern that this is creating the slums of the future. Light and Air quality issues are being created.**

**Lawrence asked if this was happening often. Leslie interjected that we are learning as we go along. Mr. Howard reminded her that there are tests that you should be questioning as you go along. These**

are State Law requirements that you should be running through to see that the application passes all requirements before you grant the variance. If the application fails in one of these tests, you should not be granting the variance. These are very clear State Law in determining whether an application is granted or denied. He provided the Board with a copy of this document. He continued with suggestions that if you are contemplating changes to the way some of the code is written than you need to make lists and suggesting these changes to the Town Board. Jeff questioned Leslie as to the drafting of these changes as had been previously discussed. And he continued by addressing Frank, the ZBA liaison to the Comprehensive Planning that he needs to be bringing these things before that committee. Frank brought up a suggestion that the section with the footnotes with the zones (attachment 3) should have a line under each zone spelling out the minimums and maximums to clarify and rid the confusion for preexisting and non-conforming. The same rules for everybody, the same way to calculate.

Lawrence suggested that if this were a problem than the ZBA should suggest changes. However he cautioned that “piece meal” amending a code, you try to fix one thing, can affect another, you need to look at the whole document. He continued that the ZBA should in fact, get input from the Building Dept, and the Planning Board for the larger lot info. Is this a problem with the larger lots as well?

Ed Ferratto asked in Code 232-24.C, how the ZBA board would know that the owner never joined adjoining lots? Jeff questioned, would the ZBA ask for deed information. Lawrence replied that separate deeds and separate tax bills are not the same. He continued by asking with the recommendation of keeping notes as to what needs to be changed now, propose changes to the Comprehensive Planning and the Town Board. Is everyone clear on Non-conforming lots? Stosh and the entire ZBA Board thanked Mr. Howard for his explanation, with all agreeing that they were more comfortable and clearer with the law. Bob Sacks reminded the ZBA members that you have to agree to interpret the law the way it is written.

**New Business:**

None

**Adjournment:**

A motion was made by Stosh to adjourn the meeting, this was seconded by Leslie. The motion was carried, unanimously. The meeting was adjourned at 9:00 PM.

Respectfully Submitted,

Theresa A Traver  
Recording Secretary

**Attachment:**

The test questions from Lawrence Howard