

**Town of Copake
Zoning Board of Appeals
Minutes – April 24, 2008**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, April 24, 2008, at the Copake Town Office, 230 Mountain View Road, Copake, NY. Chairman, Stanley Gansowski called the meeting to order at 7:05 PM.

Introductions began the meeting; roll was called with the following ZBA Board members present: Stanley (Stosh) Gansowski, Jeff Nayer, Shawn McClain, Frank Peteroy, Leslie Wood. Alternate, Louis Kibler was absent.

An Audience of approximately 8 was present, including Town Board Member, Bob Sacks, and Building Inspector, Ralph Shadic.

Minutes:

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

The minutes of the March 27, 2008 meeting were reviewed. Shawn requested that an addition to the minutes be made, on page 6, *Recusal of Board Members; prior to, Stosh reported to the Board.....*; Shawn had asked Stosh to contact the town attorney for the recusal information, specifically because of his position on the Taconic Shores Landowners Assoc. He wanted clarity on the conflict of interest issue and recusal.

After discussion, Jeff made a motion to approve the March 27, 2008 minutes with the additional language, this was seconded by Leslie. The motion carried, unanimously.

Public Hearing:

A Motion was made by Shawn, and seconded by Leslie, to open the public hearing. Motion carried, unanimously.

Application # 2008-03: Michael & Anne Gershon, Sky Farm Rd: Special Use Permit, construction of a swimming pool on the side of property. Mr. Guy Winig, landscape architect, representing the Gershon's, and Attorney, Richard M Koweek, representing neighbors, Mr. Mrs. Resnick, who were also present, came forward.

Mr. Winig presented the ZBA Board with a new drawing of the planned pool; this was done to address the Resnick's concerns. These new plans included a 5-foot wooden fence surrounding the equipment area containing the pool pump and heater to detonate the noise. The fence to be screened naturally with evergreen shrubs, trees, and bushes. He also presented the board with the requested report from a geo-technical engineer (copy included in file in ZBA office). Mr. Winig reported that the preliminary test was positive, the weathered shale ledge was stable and would anchor the pool; however the engineer wanted to do one more test after the initial excavation, to test the newly exposed unweathered shale ledge for its stability.

Leslie asked fellow ZBA Board Members; if we approve this application will we then condition the approval on the findings of the 2nd geo-technical engineer report? My concern is that it be safe, and it won't slide down hill. Jeff answered with; we are asking for a release from the engineers stating that the pool will be safe so that the ZBA and Town will not be held responsible. If this property owner had adequate space to put the pool behind his house, as Zoning requires, we would not be asking for this. Leslie continued; on the other hand the entire project has to go under our review – we have the responsibility that it be safe. Shawn reinforced this opinion with; because we have the application before us we should be looking for safety. Stosh continued the discussion by adding; it is common sense to look at everything before approval is granted.

Frank inquired about the pool and its depth. Mr. Winig responded that the pool was to be 8ft at one end and 3 1/2ft at the widest end, which would be nearest the house. It is to be a gunite pool, set on gravel and crushed stone. Frank again expressed concerns of the pool moving down the hill; structurally it is precarious. The town ZBA has an obligation to make it safe. The engineers need to assure that it is safe, not the pool contractor. It all has to be dealt with professionally and signed off by the professions of this particular expertise and not through the contractor.

Frank then provided the group with an Arial photo of the site (also included in the file in the ZBA office), with rough calculations of the distances between the Resnicks, who are concerned with the potential noise, from the existing above ground pool, and the proposed in ground pool. The photos showed the Resnicks are closer and above the existing pool, which may account for the noise, but will be further away and below the proposed pool. He continued to explain that noise generally travels in a circular upward fashion from its source so the potential noise may be diminished by distance, elevation and berms and trees. He went on to explain one of the benefits of the pool would be its water, water puts out fires. According to the Fire Company it would be an asset to the neighborhood to have the pool, there are no fire hydrants in the area, so that events rely on response time. Copake Lake is some distance away, the hoses are good for 1000 ft, at best. The tankers pump 1500 gal per minute, so roughly the pool could equate to 20 minutes worth of fire fighting if needed.

To this bit of information, Jeff suggested that it be an opportune time for hearing what the Resnicks had to say. Mr. Resnick explained to the Board that their concern was noise, they come up for peace and quiet. The existing above ground pool is an entertainment area and becomes quite noisy at times. When they were notified of a public hearing for another pool on the other side of their property, they became quite anxious. They have met with the Gershon's since the first public hearing, and with Mr. Winig, the project's landscape architect, and have agreed that the addition of the 5 ft wooden barrier around the pool equipment area and a 4 ft fence around the pool itself, along with the trees and shrubs to quiet the noise would lesson their anxiety. We are ok with the noise issue as long as they do what they say they will do.

Jeff than asked Building Inspector Shadic if they would need another variance for the 5 ft fence. Mr. Shadic responded with no it would not be necessary. Jeff continued by asking Mr. Winig if the propane tank would be buried, the response was yes it would. Leslie than asked about the types of conifers to be used for screening, she remarked at what an incredible view it was and would not want this view obscured by trees that the ZBA required them to plant for screening a fence. Shawn expressed concern to go into this area, we shouldn't be trying to ask them to plant trees nor can we stop them. Attorney Koweek interjected reminding the Board members that the Resnicks are asking for screening as well as the fence. Mr. Winig said that low juniper, rhododendrons, broadleaf low screening was the plan to avoid a tall wall of trees.

Stosh than asked if anyone had any thing else to say to this application. Shawn expressed concern that by granting an area variance for this particular application we need to be careful, should someone else ask for the same thing are we going to grant it, are we setting a precedence. Frank assured him with no. We have set certain conditions here and they are clear: 1. fencing & screening, 2. approval of the site by the 2nd geo-technical engineer test, 3. propane tank is to be buried.

Leslie made a motion to close the public hearing, seconded by Shawn. The motion carried, unanimously.

Shawn made a motion to accept the application with the new plan for the fence and screening, and the preliminary geo-technical engineer report, pending the 2nd test result of the excavation site is also positive, (copy of this test to be sent to the ZBA,), and that the propane tank be buried. Frank seconded this motion. The motion carried, unanimously.

Shawn made a motion to open a Public Hearing, this was seconded by Leslie. The motion carried, unanimously.

Application # 2008-05, Frank & Sandra Clegg, Birch Hill Road, Area Variance to build a home: It was determined that all abutters were duly notified of said public hearing. Mr. And Mrs. Clegg were present to answer questions regarding this application. Stosh asked if the Cleggs had brought a copy of their deed to determine if the subdivision had been done prior to the current zoning law. After a review of documents and much discussion it was determined that the original owner had subdivided in 1968 and the property deeded before 1972. All prior to the current zoning laws.

Frank reviewed the map and asked where the septic was to be located. Mr. Clegg responded that it would be in the back, but the perk test had not yet been done. Frank suggested that they use a septic company that is familiar with Board Of Health regulations so that approval by Planning Board and Board of Health will be smooth. Jeff asked if they had ever met with the Planning Board, as was suggested to them last month. Mr. Clegg told him that they were waiting for the perk test; they had spoken with a representative of the Planning Board and received an application.

Stosh asked if any one else had questions, or if someone from the audience wished to speak. With no one responding, Leslie made a motion to close the public meeting, seconded by Shawn. The motion carried unanimously.

Frank made a motion to accept the application for area variance, to build a house, this was seconded by Jeff. The motion carried unanimously.

New Business:

Applications:

No new applications were received.

Correspondence:

Hudson Valley Smart Growth Alliance: It was determined that this piece of correspondence, advertising a lecture on urban sprawl, would be passed onto The Comprehensive Planning Committee.

Planning Board issues:

Frank suggested that the ZBA Board Members read the Planning Board minutes to keep abreast of current issues, he became concerned of issues after attending last month's meeting, and questions whether applicants are not asking for a variance, prior to going before the Planning Board. Jeff also questions procedure, if they should be coming to the ZBA, does the Planning Board have the right to change the procedure. Concerns were also expressed by a member of the audience, who specifically was alarmed by the Catamount Plan. They are asking for a re-zoning of the area. Frank questions that this application should be presented to both the ZBA and the Planning Board, do they have the right to by-pass the ZBA for approval and any changes to zoning needs to go before the Town Board for vote. A lengthy discussion ensued on the topic, and Shawn suggested the town attorney should be asked. Bob Sacks suggested these questions should be directed to; Attorney Lawrence Howard, who is most familiar with Copake Zoning. Ralph Shadic assured the group that the Planning Board cannot change zoning. Bob agreed, the Planning Board and the ZBA make recommendations to the Town Board for changes, and the Town Board votes whether to make the changes or not.

Frank, who was present at the Planning Board Meeting, informed the group that the Catamount Application was asking to have the zone changed from an R zone (residential) to a PCID (Planned Commercial Industrial District). The banks backing this proposal are willing to finance only if the zone is changed. Frank cautions the group of this by saying we need to look at the over all picture, are we opening a Pandora box, to whom will this benefit, the company or Copake. Leslie speculated that this change was for the benefit of the bank, since it would be better collateral for them and not for the benefit of Copake.

Shawn again voiced his opinion that the attorney be notified and continued that with new members on the Planning Board, Stosh should open a dialogue of communication with Marcia Becker, Chair. Jeff cautioned that if they are supposed to be coming before the ZBA for a variance and are not, are we setting a precedence of not following zoning proper procedures. Stosh agreed that no communication was coming from the Planning Board and that he would contact Marcia and Attorney Lawrence.

Discussion continued on Zoning and procedure. Questions arose regarding whether agriculture law can over ride zoning, are farms exempt from zoning. It was determined that agriculture law can override zoning, depending on specifics. Use and set backs must be met to obtain the building permit. The permit is good for one year, the building inspector, inspects and upon approval issues a CO.

Old Business:

Training:

The training at the Columbia-Greene Campus on 4/29/08, which is a 2 ½ hr training, will be attended by Stosh and Jeff. It does not meet the required minimum of 3 hours but counts toward it.

Frank reminded all of the up coming Pace training also at the Columbia-Greene Campus on 5/31/08, which is an 8 hour day, does meet the required training. He asked that all planning to attend let him know by 5/3/08, since registration is required prior to this training.

Adjournment:

Stosh, asked if any one else had any further business. No one responding asked for a motion to adjourn. Shawn made a motion to adjourn the meeting, seconded by Stosh. The motion carried unanimously. The meeting was adjourned at 8:15 PM.

Respectfully Submitted,

Theresa A Traver
Recording Secretary