

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

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

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

An audience of approximately 9 was present, including Town Board Member, Bob Sacks, Zoning Enforcement Officer, Ed Ferratto, and Planning Board Committee Member, Chris Grant.

**Minutes:**

Shawn made a motion to approve the minutes of June 26, 2008, this was seconded by Frank. The motion carried, with 4 yeas, and Jeff abstained.

**Public Hearing:**

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

**Application: 2008-08, Douglas & Harriett Ziegler, 38 S W Colony Rd, Copake Lake, Area Variance, addition of mudroom and build a garage.** Ms Jaclyn Tyler, from JT Drafting & Design, as well as the applicants, Douglas & Harriett Ziegler were present and came forward to answer questions.

Ms Tyler, presented the Board with an up-dated Survey of the property showing the proposed garage to be 11' 3" from the boundary, and would be about 75 feet from the lake.

Shawn asked if DEC had been contacted, approval would be needed, since the proposed plans would put the dwelling closer to the lake. Jeff asked for clarification as to separation of 2 variances. Can we approve one without the other? Discussion ensued; the group came to a consensus that they could approve one part, without the other and it would be contingent upon DEC approval.

Frank questioned who did the new survey, Ms Tyler responded Brian Franks, and agreed to provide the committee with a copy of the new map. Stosh referred to the minutes of June 26, 2008, request to shorten the garage, was this to get it behind the house? Mr. Ziegler explained this was not possible due to the steep grade, the plans were for the garage to be in the front yard, and pointed out that there were other front yard garages in the area. Frank informed him that some front yard garages had been grand-fathered, since they were built prior to the new code. Shawn pointed out that many of the houses in Copake with waterfront have garages in front of their house, and to people that live on the lake, they consider the lake to be their front yard and the road side their back yard. But, as Leslie reminded him the zoning law does not have it this way. Jeff asked if there is a problem with moving the garage back? Mr. Ziegler again explained that due to the steepness of the grade, the placement of the septic system, and the angle for entrance from the road, this would be impossible. He further explained, that there was no other approach for the proposed garage and that they would be agreeable to planting trees and shrubs for screening. Frank asked about Mr. Ziegler's business, where the equipment would be stored and where the main office was to be located. Mr. Ziegler quickly responded that the business office and equipment storage would remain at its present location in Dutchess County. He continued to explain that they were hoping to create a full-time residence at the Copake lake property for retirement, and a garage would be a necessity not only to park and secure the vehicles but his tools as well.

Ms. Tyler asked the Board Members if they saw an alternative to this plan. The Board went into deliberation; questions arose, should we look at it the way we are with every aspect, being looked at, without manipulating the original plan? Separate the house plan from the garage? Garage could be an issue? Nothing can be approved without DEC consent. The way the house is situated on the piece of property, the additions would bring the value up, however the garage in the front

could open a big can of worms, it could set a precedence. The DEC requirement of 100 feet from the lake, they will be asking about the containment of gas and oil seepage. Consensus: The garage is the issue.

Mr. Ziegler informed the committee that the cars, which are presently parked in the dirt driveway, would be parked in the exact place. The only difference to be that a cement floor would be added, and containment would be far better on cement than in the dirt. Louis made an observation that this property is unique, the issue should be less of the garage is in the front and more with the DEC issues. Mr. Ziegler asked the committee to look at the variance at a case-by-case circumstance not as cookie cutter issues. Leslie explained that every case is different, but we have a lot of similar cases. Stosh asked Mr. Ziegler to explain what the hardship would be without the garage. Ms. Tyler interjected addressing the issue, A garage could not be attached to the house on the side since it is the side with all the bedrooms, and without a garage Mr. Ziegler would be unable to sell his present home, he would have no where to house his tools. It is a catch 22. Frank asked if they had considered an open breezeway?

Stosh asked if anyone in the audience wished to speak to this matter. Neighbors, Mr. & Mrs. Melnick spoke favorably of the plan. Stosh then read 2 letters that had been received from abutting property owners; Jessica Sachs, and Mrs. Hommes, both were in full support.

After conferring with her clients, Ms. Tyler asked, if approval could be granted should the plan for the garage be withdrawn?

Shawn asked what would approval of part do for you. Ms. Tyler said without the garage we could proceed to get approval from DEC for the additions to the house. Then latter in another application we can seek approval for the garage, and will have an idea of what the DEC requirements will be.

Leslie made a motion to approve the part of the application, which pertains to the house only, not to approve the garage, which was withdrawn. Ms. Tyler would provide the ZBA with a new copy of the plan without the garage, and this approval is contingent upon DEC approval, which if granted, applicant would provide the ZBA with a copy of such approval. The motion was seconded by Shawn. The motion carried, unanimously.

**Ms. Tyler, then asked the committee for information regarding the similar case, to which Stosh instructed her to place her FOIL request with the Town Clerk. Stosh also reminded the applicants that a site plan review approval would be needed from the Planning Board, to which Mr. Chris Grant spoke, and informed the group that a public hearing to this matter was scheduled for August 7.**

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

### **Correspondence:**

**A letter was read to the committee, by Stosh from a Mr. John Ohlerich, copy of which was also sent to Mr. Ed Ferratto, Zoning Enforcement Officer. In his letter, Mr. Ohlerich, addressed a violation of town code 232-14, and of 232-9. R. He requested to have the situation investigated, and properly remedied. Upon being informed of the facts, by Mr. Ferratto, all were unanimous in the decision that a violation notice was to be issued. Bob Sacks reminded the ZBA Board that there is a need to be consistent and to follow the law as set by Town Code. Shawn inquired about setting some sort of time limits; Bob interjected and said that once a violation notice had been issued it was up to the judge to set the time limits.**

### **Non-Conforming Lot Discussion:**

**Bob asked that Stosh read his E-Mail of Wed. Jul 16, 2008, concerning the discussion at the ZBA meeting of June 26, 2008. This was sent out to members of the Town Board and ZBA.**

*To All:*

*As you all know, and as the ZBA minutes of June 26, 2008 indicate, there was considerable discussion and what seems to me to be unwarranted confusion on the interpellation of non-conforming lots.*

*The Town of Copake is not in any way unusual in having the term “non-conforming” in its zoning code. After considerable research I have found hundreds of other New York towns with code restrictions very similar to ours. These codes are written and devised for the same purpose as ours, - to define, regulate, and administrate fairly a town code for lots and structures that do not meet town requirements after the implementation of a new zoning law.*

*Here is an example of language from another town that seems to me to be very clear in its intent.*

*The Ordinance has established separate districts and standards, each of which are appropriate for the uses and standards of that district. It is the purpose of this Article to regulate those non-conforming uses, lots, and structures which substantially and adversely affect the orderly development and taxable value of other conforming property in each district, and to specify those circumstances and conditions under which those non-conforming uses, lots, or structures shall be permitted to exist with restrictions.*

*The key words here and what I similarly expressed at the last meeting, are to specify those circumstances and conditions under which those non-conforming uses, lots, or structures shall be permitted to exist with restrictions.*

*As this states, non-conforming lots are permitted to exist but WITH RESTRICTIONS. They are not considered “conforming” because they existed before zoning. They are permitted to be as they were, but are considered, in fact, non-conforming.*

*Additionally I would add that the Town’s code has been reviewed over and over by lawyers for forty years. Doesn’t it seem likely that at least one of the lawyers in the last forty years would bring to our attention the fact that our code is wrong, or at least unusual, and not in compliance with NYS law? How about the dozens of lawyers that have stood before the ZBA? Have they pointed out that our code is unenforceable? Not in the five or six years that I have been attending meetings.*

*I asked at the last meeting for you to seek council in this matter. I do so again. Get our lawyer, prep him to the discussion before hand, and have him come in prepared to the next ZBA public forum and address this issue finally and with exactitude.*

*The members of the ZBA board must be fully able to willingly comply with and agree with the application of our town law as the law. It is the serious mission*

*of the ZBA to apply the code as it is written. If any member of the ZBA cannot agree with this fair application of our law as approved by various Copake Town Boards over the years, they should in good conscience step down from the ZBA.*

**Stosh read a letter from Lawrence E. Howard, Esq., Town Attorney, regarding the issue of the interpretation of Town Code 232-24 Non-Conforming lots. The attorney was unable to attend the meeting.**

*The Planning Board has requested an opinion regarding a portion of Section 232-24, Non-Conforming Uses, Structures, and Lots, of the Town's Zoning Code.*

*The question relates to the interpretation Section 232-24C(2)a-c, when the Board is reviewing undersized "non-conforming" lots. The relevant section is reprinted*

- (2) Nonconforming lots may be deemed conforming, and no variance shall be required, provided that:*
  - (a) Such lot does not adjoin any other lot or lots held by the same owner whose aggregate area is equal to or less than the minimum lot area required for that district, in which case only one one-family unit may be constructed for the aggregate area.*
  - (b) Such lot has an area of at least 5,000 square feet and a minimum width of 50 feet.*
  - (c) It complies with all other requirements for the district in which it is located.*

*It is my opinion, based on the foregoing text of the Town of Copake Code, existing lots of record that do not meet the minimum lot size but do meet the conditions listed in sub-sections (a), (b), and (c) are "deemed" conforming. A lot that is deemed conforming requires no action by the Zoning Board of Appeals for the construction of a single family home provided the application meets all of the other use and dimensional requirements of the code.*

*Therefore, a building permit should be issued by the Town for existing lots that fall between 5,000 square feet and the minimum required lot area in any District. An undersized lot that is deemed conforming is no different than any other property when it comes to the application of the other provisions of the Town Code.*

- *No new undersized lots are to be created. ( without a variance )*
- *An Area Variance would still be required, from your Board if the proposed structure violates any other dimensional requirement.*
- *A Use Variance would still be required, from your Board if the proposed use violates the code's use requirements.*
- *Site Plan Review may still be applicable, Etc.*

*For example, if an applicant has a 5,500 square foot lot and he proposes to build a house that fits within all of the other dimensional requirements ( setback, height, etc.) and he can demonstrate ( to the building dept.) that he meets all of the other requirements for the issuance of a building permit, then he does not need to appear before the Zoning Board of Appeals.*

**At this, Leslie stated, that the issue here is not addressed, he speaks to a new house what we need addressed is an existing house, non-conforming houses on non-conforming lots. Stosh disagreed by stating that as long as all the set backs, dimensions, height, etc. on 5,000 square feet were met, then they do not need to appear before the ZBA, this has been clarified. Leslie again affirmed, no, we have a different height standard for a non-conforming and conforming lot. What needs to be addressed is how you measure the height. Jeff agreed and added, you have to have an equal way of measuring. Bob suggested that it would behoove the ZBA to spell out the code in clear language. The procedure would be to draft and go to the Planning Board for recommendations. Frank is your representative to the Comprehensive Planning Board, he needs to alert them that you are doing a code interpretation. Leslie agreed to write a draft for the next meeting, it would be a good time since the attorney will be asked to be present.**

**It was at this time, that Frank asked to read his prepared statement;**

*To ZBA, Councilman R Sacks, et al*

*Clearly, understandably, the property rights of Copake residents continues to be extinguished by ignoring the words “exempt” and “deemed conforming”.*

*As I understand it, the purpose of a “liaison” is to observe and report. What is happening instead, is an attempt to discredit a verifiable opinion and*

*influence a quasi-judicial board – the ZBA of Copake. One has to question the propriety of the e-mail dated 16 July '08, 11:45 AM.*

*Yea or nay, such strong worded opinion from the liaison, could at the very least, be construed as inappropriate and out of order.*

*If we carefully read the quote from the 'other town',... 'substantially and adversely affect the orderly development and taxable value of other conforming property in each district...*

*Property home owners take note. If your lot is less than the Zoning district you are in, then, you are affecting the orderly development and taxable value of others in your district.*

*Now we all know that is simply not true from our tax bill and assessments. We must read the words in proper order. What nonsense what an irrational thought process, we are being asked to believe.*

*How can one not understand the Municipal reg in exhibit that states; 'Zoning regulations are required to be uniform "for each class of buildings throughout any district," This is clearly entitlement. It respects the fundamental property rights of all taxpayers.*

*Someone has to explain, how the property on Polk Dr and RT 7, in the R2 zone of 30K, was able to build to a height of 32ft 11in plus/minus, from the lowest grade, yet, applicants in another R2 zone are being compressed to 25ft. And to this, we add the knowledge that the property is only about 7600sf. Verses the 25ft strangulation properties that have 12,14,17,000sf of land next to 4 story buildings.*

*What makes this property entitled to more than the next guy, than his neighbors. What shameless fraud is being perpetuated on the property owners of conforming lots by such absurd logic that denies entitlement. It is the theater of the absurd. Do as I say not as I do.*

*To be sure, this is not a free ride. Meeting certain other conditions to be classified as 'conforming', the controls that are in place, and have been since 1972, are the setbacks, %of lot coverage and of course the height. The whole idea from the State Municipal Law and the 1972 Zoning Code, was to give everyone that qualifies and even start, the equal footing they are entitled to.*

*Clearly, we have abused the privilege of government, of providing sensible, equitable, and rational guidance to the average taxed property owner. I am not finding any abuses of this type at other levels, and the small property*

*owners makes up the major of the tax base of Copake.*

*Mr. Sacks, you may not tell me what the meaning of a word is, you may not tell me what a sentence means. It is the pterodactyl that is extinct, not the meaning of exempt, and deemed conforming. I have been at this for 47 years.*

*I know what uniform means; I know what class of building means; I know what throughout a district means; I know what exempt means; I know what conforming means; I know what deemed conforming means. I know what property rights are. It all means that Constitutional Right to own property and the quiet enjoyment that goes with it.*

**Leslie made note of paragraph 6 of the statement, saying she was not familiar with the case, but continued that we all know of cases where approval was granted when it should not have been. Jeff added, we are constantly confusing the issue conforming/non-conforming, if it doesn't meet the requirements for the zone they are in, they will need to appear before the ZBA. Ed Ferratto interjected; you need to look at the pre-existing set backs for that particular zone. Bob Sacks reminded them of their previous discussion, Attorney Lawrence Howard is to be at your August meeting, get your questions together and ask him so that you are all clear on this issue. It was agreed, Stosh will ask attorney Howard to attend, Leslie will prepare the draft.**

### **Budget:**

**The budget was discussed, the committee members felt that the continuation of current budget of \$7,600.00 would be ample, and will be submitted at the July 30, 2008 deadline. Leslie asked if this was to include postage? No, postage comes out of the general fund, it includes; 2,600 for member's salary, 4,000 secretary salary, 500 for new equipment, 500 for training. Discussion continued as to the need for a tape recorder. Bob Sacks was asked as to the Town Hall Recorder System; he informed the committee that by Law, we need to have a separate system from the Town Board, Courts, etc., for privacy and**

**liability. It was decided that a portable recorder would suffice and this piece of equipment will be priced and a decision to be made at the next meeting.**

**Shawn made a motion to adjourn the meeting at 8:50 PM, this was seconded by Frank. The motion carried unanimously.**

**Respectfully Submitted,**

**Theresa Traver  
Recording Secretary**

**Attachments:  
Ohlerich Letter  
Peteroy Memo 7/24/08  
Howard Letter 7/24/08  
Sacks E-Mail 7/18/08**