

**Town of Copake
Zoning Board of Appeals
Minutes - July 23, 2009**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday July 23, 2009, at the Copake Town Office, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman, Jeff Nayer at 7:00 PM.

Present at this meeting were: Jeff Nayer, Leslie Wood, Hilary Thomas, Michael DiPeri, and Frank Peteroy. Shawn McClain was unable to attend. An audience of approximately 20 people were present.

Minutes:

The minutes of June 25, 2009 were reviewed. Frank asked that a statement be placed in the minutes. It was not included in the minutes because it could not be verified that it had been said, he protested stating that he had read the statement. Leslie suggested that he make the statement again to be included in the July minutes, to this he replied that the statement should be included with the minutes of June 25, 2009, and he continued that the tape recording is wrong.

Leslie made a motion to suspend the reading of the minutes and to accept the minutes of June 25, 2009 as written, this was seconded by Michael. The motion carried, Leslie, Michael and Jeff voted aye, Frank voted nay.

Leslie again requested that he read the statement which he wanted included in the minutes, so that the statement could be included in these minutes.

Frank read, " The minutes should have included on page 4, under "Zoning Law Wording": the quote that I read from the State law that Zoning regulations are required to be uniform for each class of buildings throughout any district", this has been consistently clear to me and as I have memoed, the most equitable unbiased unprejudiced position, As I stated this was given to me by the Attorney present at that meeting last year. The state doesn't follow the town, it is clearly the other way around. The town is inconsistent with the State Municipal Laws, particularly on this point. "

Jeff explained that under New Business; Correspondence would be read prior to the opening of the two public hearings as there is information pertaining to these hearings which are important.

New Business:

Correspondence:

1. Returned certified letter from one of the abutters for case # 2009-02, the letter was returned to the Copake Town Office because of an incorrect address. The correct address was retrieved from Vana, and the letter overnighted, using the tracking & confirmation website of the USPS, it was verified that the letter had been attempted but not signed for, therefore not delivered. (attached)
2. Letter was read from Lawrence C Mercillott, pertaining to case # 2009-01. Mr. Mercillott's contention was for concern that several listed persons had an easement right on Nielson property and they had not been notified of the public hearing. Mr. Mercillott asked to address the Zoning Board, but was asked to wait and was assured the opportunity to speak after the opening of the Public Hearing. (attached)
3. Becker to Zeigler, case 2008- , one dated June 30, 2009 and the other dated July 18, 2009. (both attached) Mr. Zeigler who was present in the audience asked to speak regarding these letters, permission was granted. Mr. Zeigler explained that the Planning Board was not reading the plan correctly, cause of the confusion, they are picking up the dotted line representing a shed roof. The shed roof on the plan, was there from the beginning. He informed the Zoning Board that he was required to supply the Planning Board with additional copies of plans at his cost. After he had received approval from the ZBA, they needed to go back to the Planning Board. He was issued a building permit and does not understand the internal problem. Frank asked if he had been issued a stop work order, to this Mr. Ziegler replied no, but I do not want a problem. Jeff stated that we the ZBA, can't answer for the Planning Board, our approval was for a variance to build closer to the lake than the law allows, and this was given pending DEC and Health Dept approval. A site-plan review is another issue. Leslie informed Mr. Ziegler that our approval was to the Planning Board for the variance. Mr. Ziegler said he felt like a ping pong ball. Now they want me to color in the dotted line on the drawing to indicate the roof. Frank stated that you should not touch a set of drawings, if you need me to go with you to see Marcia I can.
4. A memo from the Comprehensive Planning Committee was read. It is an invitation for the Town Board and Committee Chairs to view their perspectives, issues and concerns regarding a Plan. It is a first step in addressing some questions and an opportunity for input to issues.

Public Hearings:

Application # 2009-01, Lisa & Mark Nielson, SW Colony Rd, Copake Lake, Area Variance:

Leslie made a motion to open the Public Hearing, this was seconded by Michael. Motion carried, unanimously.

Ms. Nielson was present and came forward to answer questions pertaining her application. She presented to the Board as requested, a copy of the building plans, a letter from the engineer that implying verbal approval from the Health Dept for septic system and informed the Board that DEC informed her that they had no jurisdiction. To this another member of the audience answered that this is also what he was told by DEC, only the shoreline and Mosquito Island, a natural wetland area are within their jurisdiction.

A member of the audience, identified himself as Lawrence Mercillott, requested to speak to this issue. Permission was granted, he informed the ZBA that his letter was sent to inform the Board Members that there are easements on the property in question. The proposed building would infringe on those easement rights. Jeff reported that Mr. Melnick had called and reported that he had an easement of 15' section on the other side being the eastern side of the property. Lisa replied that her deed only shows the easement of Mr. Melnick. When Frank asked her for a copy of her deed she produced a copy of her survey, which did not show this easement.

Mr. Ziegler again asked to speak, he stated that he was not opposed to her putting up a bath house, but that the stakes identifying where the building would be located are currently on the right of way of Mr. Melnick.

Thomas Taylor, also an audience member asked what is the set back distance from the lake and what is the set back distance from a right of way. He was informed that the distance from the lake was 100' according to Copake Zoning Law, and since no one could answer the question concerning the distance of a setback for a right of way, Jeff said he will check with the lawyer.

Frank asked what the zone area was, the map was referenced and determined that the zone to be R-2. He then referenced the chart to find the side yard to be 30' on each side because it is a corner lot. Lisa asked what designates a front, she was informed that the road determines the front not the driveway. Frank asked what the size and intent of the building would be. Ms. Nielson informed him that it would be a bath & storage building of 20'x20'. Frank told her that the classification of the building changed a bath house would be 5'x15', this was an accessory building and would fall into different setbacks.

She was asked to clarify her lot by producing a drawing, was it a corner lot, none of her property was on Cty Rte 7 only on SW Colony Rd. It was determined that the front of the proposed house faces SW Colony Rd. She would need four variances; 1. Distance from the lake, 2. both side setbacks, and 3 accessory building in the front of the house. Leslie questions whether this is even possible with an easement on both sides of the property. Lisa again stated that she was only aware of the one easement. Frank told her that she would need a copy of her deed, and asked about a title search. He continued to ask about the plan to put the septic under the road, which sends up all kinds of bells and whistles.

We have issues to protect the lake, there are easement issues which have just come to light and the question of what type of septic system will be the best for your plan and sight is in question.

At this, audience member stood, identifies herself as Gloria Lyon and informs the ZBA members that her sister, Charlene, owns the road, all property owners along the way have right of way. Ms. Nielson cannot go under the road without permission according to the 1920 deed. Robert Piper requested to speak, his deeded rights were recorded with the County Clerk in 1960. Mr. Ziegler reported that Mike Melnicks rights are also recorded with the County. Mr. Mercillott stated that the chain of deeds with the easement rights was recorded in 1922, book 178, page 2, the right of way issued in 1926 by Miller.

Frank informed Ms. Nielson that she needed to identify on the map the left and right easements. He also asked her if she would consider a smaller building to meet the setbacks. She replied that nothing is locked in stone, the building could be smaller. Leslie added that the County Health Dept approval is still needed the verbal approval is not adequate, and now there are right of way issues to be considered. Ms. Nielson again stated that she had no knowledge of the western easement rights, and was told by the ZBA Board members that it was her job to research this not the ZBA. Leslie asked her if any of this made sense, you do not get an 8' setback, 30' is required and 100' is required from the lake.

Lisa then asked about the requirements to place a port-a-let on the property near the lake. It is our property, we pay the taxes, we just want to enjoy the lake. To this Frank made some suggestions: 1. the easements need to be proven. 2. have the architect establish your building according to Copake Zoning Laws, and to establish what will benefit you on your unique piece of property. I'm not sure what the County's feeling are about a port-a-let that close to the lake. We are here only to review your proposal according to Copake Zoning Law. To this Ms. Nielson said you are drilling the nails in the coffin. The attitude hasn't changed in the two years I was before you. If the size of the building decreased or we moved it back, would I then get the variances I need? Jeff informed her that we have had more information come to light, and there are a lot of people with easement issues, it is the duty of the ZBA to attempt to grant the least amount of variances as possible to accomplish what it is you wish to do with your property. The Zoning Laws are here to protect the town.

Leslie asks Ms. Nielson, what is the hardship here, that is a legal term to justify changing the law for you, and it's not just one law it's four. For a bathhouse, it is stretching it. Ms. Nielson replied that it was not a hardship and that the size could be reduced to 10' x 10' if necessary.

Mr. Zeigler again asked to speak, questioning whether the property was one piece combined or remained as two separate parcels. If it is still two than she has two front yards because SW Colony Road goes right through the property. Where will the well be drilled and the septic, not on the lake side?

Mr. Mercillott spoke informing the Board that through his research, the easements were issued and recorded through a chain of deeds. The Miller's owned the piece of property which now belongs to Nielson's. He gave deeded easements to the pieces of property that he sold, but it was never recorded on his piece of property in my opinion. Mr. Ziegler as well as several other audience members stood and claimed that their deeds in fact showed the right of way. Ms. Nielson said that she had had a title search done there is only the one easement that turns up. She continued that perhaps her lawyer was not giving her the correct information. She turned to the audience and said I know there are lake right easements, but I do not know how many and who or where, you all need to show me proof. The tension in the room became heated, to which Jeff stopped all conversation. Frank told Ms. Nielson that the road right of way and lake easements were a private matter, not our matter. Jeff asked her if she wanted to continue to pursue this issue, you can get as involved as you want it is your time and money. Ms. Nielson said she would return with her lawyer, she has already got a lot of money invested. The board members informed her that the Public Hearing would remain open, and that a notice for the right of way would need to be published at least 10 days prior to a continuance. All the information that the Board has requested from her would need to be submitted to the Zoning Board of Appeals office as soon as possible to allow for the publication of the notice. The next ZBA meeting would be on August 27, 2009, requested information needed by the 10th, to be placed on the August agenda.

Leslie made a motion to adjourn this public hearing, it would remain open pending the submission of the additional requested information. Hilary and Mike seconded the motion. The motion carried, unanimously.

Application # 2009-02, Thomas Shepherd, 25 Birch Hill Road, Craryville, Area Variance:

Leslie motions to open this public hearing, seconded by Hillary. The motion carried, unanimously.

Mr. Shepherd was present and came forward to present his case. He asked about the returned letter from the abutter property owner. Jeff informed him that this would delay the process, by law all abutters need 10 day minimum notification.

Frank submitted and read, to the Board members a written opinion: (attached)

Application T. Shepard, 20 May 2009, Zoned R 1; 25 Birch Hill Road, Craryville, N.Y. 12521; tax map # 155.-1-21; 1.98 Acres +/-, two houses. Survey dtd Oct 18, 1948, J.M. Duffy, P.E. Lic.# 5126.

Property is triangular, the front yard having approx. 453 feet of frontage along Birch Hill Rd. Ref. Survey. Birch Hill road runs generally north east from Copake Lake, at an incline of perhaps 6 to 15%. The speed limit is high. It is driven fast. With the increase in population at Copake Lake, the road is well used.

The property is unique in that the general grade of the land is below the road. A continuous row of mature blue spruce exist (about 27 ft from the C/L of the road), along the front property line, providing some measure of protection & privacy.

The trees also shade the road in the winter, probably requiring heavy salting in order to maintain safety. Chances are the road built up in the past as an improvement for maintenance, grades etc. The property

is generally lower than the road bed & lower than the continuous berm at roadside. At the very least, at 2 bench marks, the grade at the proposed fence is at approx. 2'-10" & 2'-6", below the roadway/berm.

The lower branches of the evergreens have died out & been removed. Years of salting the road by the Town, may have in fact, contributed to loss of lower branches. (salt, grit/pea stone mix is common formula of mix used). This is a common occurrence at roadsides. The spreader device of a mix is about 2 to 3 ft above the roadbed. It flays the mix out - with high velocity. It may have been responsible for some of the actual glass damage claimed by the applicant.

The trees provided 453 feet of protection & Privacy. Local traffic increases & high speeds now directly affect the welfare & personal enjoyment of the property owner. Changing times. Subtracting the lower level of the land from a six foot fence brings the fence height variously below 4 feet from the higher road level.

The fundamental property right, the right to quiet enjoyment of property has been compromised. The six foot fence would restore the privacy & quiet enjoyment of the property. We should note the six ft fence less than 1/10 of a mile from the Town Hall at a corner lot along Mountain View Road.

Leslie suggests that the fence be installed in such a way that allows for it to stick up 4 foot above the level/grade of the road, the law allows for a 4' fence this would be less of a violation to the law. Mr. Shepherd quickly responded by stating that this would create an eye sore, from the view of his house. Each section of the fence would be at a different height to allow for the perception of a level 4' above the road grade. The ground at the edge of the road is uneven. He continued to say that the crown of the road is 6' in some areas and 4' in others. He would prefer to have the fence roll with the property. Frank responded by stating that it would also triple the cost of the installation of the fence.

Hilary asked for a clarification of what Leslie was suggesting. Leslie said that the fence height would change with the grade of the road level and not the ground for the perception of a 4' fence. Frank reminded Leslie that the fence would be installed behind the row of trees. The ground is much lower there, I don't have an issue with a 6 ft fence, it won't be 4 ft above the berm of the road.

Jeff said that he noticed that Birch Hill is wider than Route 7, and that cars pick up speed going down. He wasn't sure why the fence needed to be all the way from one end of the property to the other. Mr. Shepherd said that the upper part was where they enjoyed their yard, he continued that as people leave the lake, they clean out their car by tossing the wrappers and especially the beer bottles out before they get to route 7. Sometimes they are going 70 miles per hour while they are tossing things. The property drops down on the other side of the trees, the fence would be behind the trees, so it won't show.

Leslie asked why her suggestion creates such a problem. It solves my concern to keep the law intact. It simply changes the point of the ground to measure the bottom of the fence. Hillary read the zoning law 232-9.F, Fences and Walls. *Fences or walls within a front yard shall not exceed four feet in height.....* it does not say that this is measured from the road berm, but from top to bottom. Leslie attempted to clarify herself, but with my suggestion

it would not be 4' higher than the road grade. Mr. Shepherd stated that the fence would be natural cedar to blend with the environment, he does not want it to stick out but to blend in. I can hold a 6 ft plank up for you to visualize if you wish to assist you with what it would look like, you'll see the fence will seem much shorter from the road. He continued I have lived there now for 32 years. It would be cost prohibitive to build the fence as you suggest, I can barely afford what I am suggesting. Those photographs are not taken from the crown of the road, I assure you that the fence will appear shorter.

Jeff and Leslie agreed that they would like to take a second look, and allow Mr. Shepherd to explain what it is you are trying to do. Appointments were made.

Frank commented that their privacy has been taken away, the trees are about 30 to 35 years old, they are in duress, Mr. Shepherd is attempting to save them. We need to restore his privacy. Hillary agreed, I am in favor of approving this variance for the fence. Jeff added this is not a self inflicted hardship, if the trees were not dying he would not be before us requesting this variance. This public hearing will remain open.

Hillary made a motion to adjourn the hearing, seconded by Mike. The motion passed, unanimously.

New Business:

Training:

1. Outdoor wood boiler seminar, this evening, Ed Ferratto is attending.
2. SEQRA & Land Use &/29/09, Hillary has signed up and will be attending that training
3. The Association of Towns Training, of today, Albany, Leslie, Jeff, & Mike attended

Jeff asked that a file be created in the ZBA office for training. Certificates are to be copied, one for the file and one to go to Vana for official record.

New Applications:

Application # 2009-03, Leonard Ladin, 2595 Cty Rte 7, Copake, Area Variance, Deer Fence:

Jeff asked to be recused from this case as he is one of the abutters. He promptly left the room. Leslie chaired.

Mr. Ladin came forward and presented the Board members with a small section of the deer barrier. He explained that he had lived in their house in West Copake for some 20 years, but since his retirement 11 years ago he has enjoyed his hobby as a gardener. He made mention to all the various types of plants and their cost included in his application.

The deer netting went up some time shortly after to prevent the deer from eating everything he had planted, approximately 11 years ago. Ironically, no one said anything, the barrier has been up long enough for the pine trees to grow through the netting. It is virtually invisible. The photos were viewed. Hillary agreed, she has been by his property many a time without noticing the barrier.

Mr. Ladin continued that the issue came to light when he moved the barrier back to the edge of his property to allow an expansion of his garden, a creation of a woodland garden. He placed the barrier within the confines of his property, but his neighbor asked him to move it all the way to the boundary, some 80 feet, out of concern that the deer would walk between the properties. He complied. Shortly after this the ZEO Officer questioned me and told me I would need a permit, the building inspector told me to apply for a variance because the barrier is more than 6' in height.

Leslie asked is it a fence? Frank answered by stating it is not a fence, it is a deer barrier. Mike, Hillary, & Frank have all agreed that it is hardly noticeable, they have all driven by as a preliminary inspection when the application was received. Leslie stated that a fence keeps people out and blocks your view. This material would hardly do either. It is to keep the deer out only.

Both Frank & Hillary concluded that this is a waste of time, why aren't the real violators questioned, this is not a fence.

Frank made a motion to define the material as a deer barrier, not a fence. No application for variance is needed. This was seconded by Hillary. The motion passed, unanimously. The application fee is to be reimbursed. Teri to draft a letter cc Ralph and Ed.

Jeff returned to the room.

Application # 2009-04, Jeffrey D Weinstein, 421 Lakeview Rd, Copake Lake, Area Variance:

Leslie asked to be recused, she left the room.

Mr. Weinstein came forward to, he was questioned regarding ownership of the parcel. He informed the Board that he alone owns the property. He and his wife were divorced.

Jeff reviewed the lot plan and established that the Zone was R-2, and that it was a non-conforming lot less than 30,000 square feet. The road goes across the parcel, both parcels are attached and could not be sold separately. The 20% lot coverage issue is then raised. Frank reviews the required side setbacks, 8 ft is side set back and 25 ft for rear. Discussion and calculations began, with how much the new planned garage would need to be reduced to meet both setbacks and lot coverage.

Hillary question Mr. Weinstein as to when the house was built, he stated 1920's. She suggested that ethically an argument could be raised if the roof and front lined up for esthetics.

Mr. Weinstein informed the Board that the plan included a foundation for the garage since the ground there was very steep the top would be for storage allowing to keep in line with the roof line of the house.

Jeff pointed out that now we need to know the total square footage since it will be two story and that will change the 20% lot coverage. Frank pointed out that there is one problem. The garage square footage area is for the horizontal area not included is the second floor. It needs to be included to calculate the lot coverage, also you have 3 parcels of land, but you are only asking about 1 parcel. Roughly calculated you have .22 acres with all 3 pieces, then you need to calculate the square footage of the existing house. Hillary then asked if the proposed removal of the shed and utility area would be included. It was determined that the 20% lot coverage would be calculated on what would remain along with the proposed addition. Jeff explained that the lot coverage was to protect the lake from runoff, and Frank explained that it was also light and air issues. Limiting building bulk on a piece of property is to preserve the light and airflow of the neighboring properties. The 20% was established to control that, exceeding that percentage increases the health and welfare of abutting properties. Would you like it if your neighbor did it? This proposed addition will affect the lots next door. The primary purpose is to prevent over density which affects the entire neighborhood. Jeff included that the lot is non-conforming and by law you cannot increase its non-conformity.

After, reviewing the photographs again, Frank asked about the upstairs of the existing house. Mr. Weinstein told him that there was a bedroom which was there in 1987 when I bought the house. Jeff told him that the existing second floor needs to be calculated in the square footage too. Frank then asked about the windows in the upstairs. The upstairs windows are illegal, you are required to have egress windows with 5.7 sq ft window space, for air, light and safety. Sky lights do not count.

In conclusion, Jeff summarized that Mr. Weinstein would need 1. proof of ownership, and 2. building plans. The closer you can get to conform the better you will be. Frank added the suggestion that that you should start with the basics, square footage on the lot, your setbacks, the square footage of your building.

Frank made a motion to set a public hearing pending he submits building plans, and proof of ownership. This was seconded by Mike. the motion carried, unanimously.

Old Business:

By-Laws Changes: Tabled

Application check list: Tabled

Task-Force Vehicle Storage Recommendations: Tabled

Adjournment:

Mike made a motion to adjourn the meeting, seconded by Hillary. The motion carried, unanimously. This meeting adjourned at 10:15 PM.

Next meeting will be August 27, 2009

Respectfully Submitted,

**Theresa A Traver
Recording Secretary**

**cc: file
ZBA Members
Town Board
Planning Board
ZEO
Building Inspector
Economic Advisory Board
Town Attorney**