

**Town of Copake
Zoning Board of Appeals
Minutes - August 27, 2009**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday August 27, 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, Hilarie Thomas, Shawn McClain, and Frank Peteroy. Leslie Wood and Michael DiPeri were unable to attend. An audience of approximately 12 were present including Town Board Member, Bob Sacks.

Minutes:

The minutes of July 23, 2009 were reviewed. *Hilarie made a motion to dispense with the reading of the minutes of July, 23, 2009, and to accept as written, this was seconded by Jeff. The motion did not carry, Hilarie and Jeff voted aye, Frank abstained, and Shawn asked to be abstained since he was not present at the last meeting.*

Shawn made a suggestion to postpone the approval of the minutes of July 23, 2009, until the September meeting. It was agreed that the minutes of July 23, 2009 would remain as draft, and not be posted to the web site.

Correspondence:

The following correspondence was read, and are attached to these minutes.

1. Planning Board to Sinisi, 8/19/2009 - Mr. Buddy Sinisi is the chair of The Copake Lake Conservation Society, Inc. The Planning Board is keeping him informed of their recommendations to the ZBA on two appeals regarding lake front properties. Both lots have proposed development within 100 feet of the lake. (Attached)
2. Ferratto to Castello, 8/11/09 - An Order to Remedy Violation was issued for 460 Lakeview Road, Copake. No building permits were issued, the addition has been built within 100 ft of Copake Lake. Violations to codes 232-27.B and 232-9.P.1. He has been given 7 days to apply for permits and file an application with the ZBA. (Attached)
3. Planning Board to Ziegler, 7/28/09 - Notification letter that his application for site plan review is still incomplete. Included are the specifics to correct in order for him to complete the process. (Attached)

After the reading of the correspondence, Jeff asked for any comments from Board Members being none the meeting moved on.

Public Hearings:

Application # 2009-02, Thomas Shepherd, 25 Birch Hill Rd, Craryville, Area Variance: Height of Fence.

The Public Hearing had remained open from July, 23, 2009. Mr. Shepherd was present and came forward to answer questions. The ZBA had requested a review from The Planning Board for this application. The review dated 8/6/2009, was read (Attached), suggesting that there were alternatives, and that the application for a variance should be denied. Discussion ensued as to whether the application had accompanied the request for review and the issue of precedence. Jeff informed the Board Members that he had contacted the attorney for The Association of Towns, regarding the issue of precedence, and was told that variances were issued on an individual case by case basis. Hilarie agreed that it was her understanding from a recent training that she had attended that review was case by case. Jeff requested that when the ZBA Members vote, that they state their reason for their vote for the record to show this. Shawn commented on The Planning Board's suggesting of a 2 ft berm with a 4 ft fence and would still be 6 ft, and that a 6 ft fence would look better than a 4 ft fence on top of a pile of dirt. Hilarie continued that with a berm on that particular grade would very likely cause water runoff issues, and that it was very obvious to her that the trees were dying. She continued that Mr. Shepherd's plan would be unobtrusive. Jeff added that Mr. Shepherd has spent money attempting to save the trees, and questioned whether the disease would not spread to any shrub that would be planted as a screen as suggested by the recommendations. Frank questioned as to whether the County Planning Board had been sent a request for review, and was informed that it was not necessary with this case as it was not a highway site issue. In conclusion, Jeff informed the Board Member's that he visited the property, witnessed the speed of the traffic going past, and saw the garbage from the cars all over the property. He commented on the financial hardship of Mr. Shepherd in his attempt to save the existing trees, and in his view felt that there was no other option for relief in this particular case.

Jeff asked for any additional comment from Board Members, or the audience, upon receiving none, called for a vote. The vote to approve this variance, for a 6 foot fence to be installed behind the existing row of trees was as follows: Frank, yes - Hilarie, yes - Jeff, yes - Shawn, yes. The variance was granted with a unanimous vote.

Jeff will contact Mr. Shadic, Building Inspector that the building permit is to be issued. It was also suggested that Mr. Shepherd speak to the Town regarding a reduction of speed request for Birch Road.

Application # 2009-04, Jeffrey D. Weinstein, 421 Lakeview Rd, Copake Lake, Area Variance: build an addition and garage.

The Public Hearing was not opened, as Mr. Weinstein had not submitted the building plans and proof of ownership as requested at the July ZBA meeting. He was also not present, but had spoken with Jeff, via phone conversation that he wished to withdraw his application. Therefore, the Planning Board's comments and recommendations for review of this application were not read. (Attached)

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

The Public Hearing had remained open from July, 23, 2009. Attorney, Todd M. Mathes came forward to represent the Nielson's in this matter.

Jeff informed the Board Members that he had spoken to the attorneys from The Association of Towns regarding the right-of way issues regarding this case. He was informed that right-of-way issues were a private matter, and the notification, of the Public Hearing to the holders of the right-of-way, was not necessary. He continued to say that the attorney informed him that since there was no primary building on this property that the proposed cabana could not be an accessory building.

The Planning Board's review and comments dated 8/6/09 (Attached), were then read. issues were raised regarding this request to build within 100 feet from the lake, also raised were concerns of the septic within 50 feet of the lake, and concluded its unanimous recommendation that the variance be denied. He made note that Ms. Becker referenced the original application of years back, and that copies of this original application was available as reference for the ZBA members this evening.

Mr. Mathes presented the Board with a packet of the following documents; 1. Hudson River Valley Engineers, PLLC, to Mr. and Mrs. Nielsen, dated 7/17/2009 2. A letter issued from the offices of Whiteman, Osterman, & Hanna, LLP, Albany, NY, with attached Exhibits A, B, C, D, & E, dated 8/27/09. (Attached)

Frank asked for clarification, they are asking for a cabana, an accessory building, or a bath house. 20' x 20' as they originally were requesting; that is perhaps too large, but because they do not have a principle structure this cannot be an accessory? Shawn asked about DEC involvement, and Mr. Mathes referred the Board to the letter from Hudson River Valley Engineers, PLLC, to that paragraph entitled; DEC INVOLVEMENT, to which it refers to a phone conversation only with Mr. Mike Higgins, NY DEC, Region 4. Shawn asked Mr. Mathes if Mr. Higgins had issued a written statement to support this comment by Mr. Demos, and the answer was no. Shawn informed Mr. Mathes that a letter was needed, otherwise it was mere here say.

Mr. Mathes asked permission to address the issue of the right-of-way. After permission was granted he informed the Board Members that after a title search had been conducted there was only one right-of-way that surfaced, and it was not the intention of the applicant

to impede this. Frank, after review of the application file, questioned Mr. Mathes, why then does the Building Inspector make note of 2 right-of-ways? Mr. Mathes continued that he was aware only of the deeded right-of-way of 15 ft. of Melnick, and that it was pretty clear that the proposed structure would not block or impede use of the lake. Jeff then asked why then did Mrs. Nielson first claim knowledge of one and later claim knowledge of the second.

As to the SW Colony Road issue, Mr. Mathes continued that the Nielson property was divided by this road. These properties were joined under this road. Yes, there is an easement, but this means that access of the road cannot be blocked, it is not the intention to block access of this road.

Hilarie asked about the design of the proposed building, and referred to Exhibit E of the packet just issued from Whiteman, Osterman, & Hanna LLP. This looks like a 2-story guest house, not the shed that Mrs. Nielson described to us last month. Mr. Mathes explained that the building was pre-fab, and chosen to be aesthetically pleasing, was a cabana for the purpose of a bathroom and storage so that the lake front property did not reflect that of a "campsite". He also said that the precedence was not an issue with this case, the issue should be keeping the character of the neighborhood. Most of the houses along that road are single family, much closer to the water front and boundaries than what is being requested here. He mentioned that the storm water control was planned, and the septic system was designed to protect the lake.

Jeff commented that the houses along SW Colony Rd that Mr. Mathes just referenced were built prior to Copake Zoning, and that the packet just handed the Board Members contained large amounts of information. Surely, you cannot expect us to review it all this evening, We will need time to read the material. Shawn agreed, it is only fair to all involved to have the time to read through the packet. Hilarie also agreed, needs time to review the recently submitted information. Frank, also agreed and commented that the application needs to be consistent, and specifically pointed out that the application showed the easement on the east, and the new packet showed the easement of the west.

Mr. Mathes explained that in 1996, the deeds showed the easement on the left, but in 1997 the easement was not shown, and the survey of 2004 showed the easement on the right. A member of the audience then rose, to say both easements were recorded and on file at the County Clerk's Office in Hudson. Mr. Mathes continued that is why the proposed structure is 14.2 ft on one side and 19 ft on the other. Mr. Mathes then stated that you can move or relocate an easement legally, if it is not in a specific location, as long as you preserve the intent. Frank quickly corrected him by saying that you cannot relocate an easement without an approval and it is properly documented. Are you saying there are not 2 easements, there is only one? Members of the audience are telling us that there are two with recorded book and page numbers on file. This is confusing, and if it turns out that there are in fact two easements, what then? We, the ZBA need to be cautious. Audience member, William Baldwin concurred that there were 2. Mr. Mathes responded that with 19 ft on one side and 14.2 ft on the other, the proposed building could be moved the 8 inches. Jeff explained that the right-of-way issue is a civil matter, if we ignore it, and we

are sued, we are liable. Shawn added that the burden of proof lies with the applicant. Mr. Mathes that there is a level of assurance of the right-of-way with title insurance. Title Insurance can settle this.

Robert Piper, a member of the audience asked permission to speak, he questions the comment that DEC does not have the jurisdiction on Copake Lake, that this would be a Town of Copake issue. Shawn responded that the Copake Zoning Law 232-9.P.1 *No Septic tank or tile field shall be located closer than 150 feet from a stream, creek, wetland, or other body of water. No development shall be permitted closer than 100 feet to a stream, creek, wetland or other body of water.*, protects the lake, but in his dealings with Mr. Higgins, DEC Region 4, a letter to verify this needs to be on file, and just because DEC approves doesn't mean that the Zoning Board has to approve.

Jeff concluded that in addition to the DEC letter, Ms. Nielson has still not complied with the ZBA's request for a letter from the Columbia County Health Dept, approving the septic system, and a copy of the deed. Frank added that the Health Dept approval is very important since the proposed design is for a pumping station with probably two pumps, all within 75 ft of the lake. This is a dangerous system for this location because they fail. Bob Sacks reminded the ZBA that they need to confer with the list of considerations that must be taken into account to address an unnecessary hardship, given to the ZBA by Attorney Howard last fall. Discussion of Town Law 267, *a self-created hardship is not necessarily a determinate....* ensued, and the ZBA assured that it would take them all into consideration before they made a final decision. Bob also suggested that Attorney Lawrence Howard be given a copy of the file and additional information present this evening for review. Jeff reminded Bob that with the new budget constraints placed by the Town Board permission would need to be granted prior, since there was no money in the ZBA budget. Bob again asked him to protect the Town and confer with Attorney Howard, the Town Board could approve such an expense. A cover letter would need to be drafted to accompany this packet, to include the minutes of June, July, once and if permission is granted for this expense.

The Public Hearing is to remain open, awaiting the additional information from the applicant. Jeff reminded Attorney Mathes, that the information needs to get to the ZBA office at least 10 days prior to the next meeting of 9/24/09, in order for the members to review the material prior to the meeting.

New Business:

None

Training:

It was requested that a copy of the Training Certificates of Hilarie and Frank be given to Teri for file. A copy would also go on file with the Town Clerk.

Another training was announced. It would be a 4 hour training at Columbia- Greene Community College, September 29, 2009, from 5:30 PM to 10:00 PM. Topics to be "Working With Applicants", "Planning and Zoning Case Law Update", and " Land Use Players - Local Planning and Zoning". Registration needs to be in by September 22, 2009 with no fee.

Old Business:

By-Laws: these changes would be only for up-dating and house-cleaning. Again they were tabled to the next meeting. Members are asked to E-Mail suggested changes to Teri, prior to 9/24/09, in order for them to be typed and compiled prior to the meeting.

Application Check List: it was reviewed, some changes were made. Teri to make the changes and E-mail to members prior to next meeting.

Task Force Recommendations: refers to Chapter 156; Junkyards and Motor Vehicle Storage Areas. A lot of discussion ensued on this topic, most of which was "these are not acceptable as written". Hilarie pointed out that enforcement is going to be an issue. This situation has been like this forever. Jeff commented that nothing is going to change with what is written. Shawn stated that the Task Force failed to clarify as to what or what is not allowed. He pointed out that a repair shop doesn't have to be a mess, and if they cleaned - up they would probably have a better cliental. It reflects onto the neighboring properties. We need to have a good set of rules for repair shops, what are the exact rules. Frank added that you cannot change their habits, they need to take pride in their property. The recommendations are just a white-wash as written.

The Public Hearing is 9/12/09. It was concurred that a response is needed. There is no structure in what is written. Structure is the basis for which the Zoning Enforcement Officer needs to enforce. If you're in violation, you're in violation, a ticket should be issued. Teri to draft a letter and E-mail to ZBA Board Members, upon approval will be sent to Town Board Members, copy to Vana to be read at the Public Hearing.

Adjournment:

Shawn made a motion to adjourn the meeting, seconded by Frank. The motion carried unanimously. This meeting adjourned at 9:00 PM.

Next meeting is September 24, 2009

Respectfully Submitted,

**Theresa A Traver
Recording Secretary, ZBA**

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

attachments: 10