

**Town of Copake
Zoning Board of Appeals
Minutes - September 24, 2009**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday September 24, 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, Frank Peteroy, Leslie Wood, and Michael DiPeri. Shawn McClain was unable to attend. An audience of approximately 5 attended, including Ed Ferratto, Zoning Enforcement Officer, and Bob Sacks, Town Board Member.

Minutes:

The minutes of July 23, 2009 were reviewed. *Leslie made a motion to dispense with the reading of the minutes of July 23, 2009, and to accept as written, this was seconded by Michael. The motion carried.*

The minutes of August 27, 2009 were reviewed. Frank made a correction to these minutes. Specifically, to add his comment to page 2, under Public Hearings, Application 2009- 02, 2nd paragraph.

Jeff asked for any additional comment from Board Members, or audience. *Frank read from "By-Laws, Zoning Board of Appeals" page 7, Section 8.4 Finding of Facts for Variance. The Board shall make the following findings prior to granting a variance for relief from the strict application of the zoning ordinance:*

- 1. Strict application of the ordinance would produce undue hardship and that the hardship is not self-created.*
- 2. The hardship is unique and is not shared by all properties alike in the immediate vicinity of the property and in the use district.*
- 3. The variance would observe the spirit of the ordinance and would not change the character of the district.*
- 4. The variance would observe the intent of the comprehensive plan, if any.*

The vote to approve this variance.....

Hilarie made a motion to accept these minutes with the addition of Frank's reading of section 8.4 to page 2. This was seconded by Frank. The motion passed: Hilarie, Jeff, and Frank voted aye. Leslie and Michael abstained, since they had not been at this meeting.

Correspondence:

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

1. **Todd Mathes, Esq to Zoning Board of Appeals, 9/15/09 - Attorney Mathes, representing Lisa & Mark Nielson, informing the ZBA that his clients do not have the required DEC, or Health Department documentation, therefore requesting a postponement of the Public Hearing scheduled for this evening.**
2. **Biodiversity Assessment Workshop announcement that this training is scheduled for October 17, 2009. The workshop will be held at Columbia-Greene Community College, anyone wishing to sign up needs to do so.**
3. **Building Inspector to Ziegler, Notification letter that his application for site plan review remains incomplete.**
4. **Building Inspector to Thomas Shepherd, Notification letter that his fence of which he received a building permit was to be 6 foot. The fence was being erected with the posts over 6 foot.**

Public Hearings:

As per the request of Attorney Mathes, who is representative for Lisa & Mark Nielson. The Public Hearing is postponed to the October meeting, and shall remain open pending the receipt of the required documentation from DEC and The Health Department.

A member of the audience, Larry Mercillott, asked to speak regarding his concerns regarding this application. With permission granted, he expressed concern that the site plan submitted shows the septic system easement on the adjoining piece of property also the Nielson'. Also that the leaching field was with 150 feet from the edge of the lake. Frank addressed these concerns by explaining that the pumping station that is proposed goes with the bath house. He continued that so far most information, within the application, is inadequate, none of the documents that have been submitted thus far are consistent. He specifically cited the photographs of the proposed shed, the septic design, and the plans for the building. Is it an appropriate size for what they are suggesting its use?

New Business:

Application # 2009-05, Kevin & Anne McKenna, 3200 County Rte 7, Copake, Area Variance, rear set-back issue for an addition to house.

Adam Flaum came forward representing the McKenna's. He supplied the survey and revised plot plan. The board members reviewed the application for completeness. Frank asked what zone this property was in, R-Zone. He also informed the Mr. Flaum that a survey could not be altered for this purpose.

Upon review, it was determined that the proposed plan does not meet the rear set back, nor does it meet the side set back. It was also determined that the lot is a non-conforming. The existing septic system was determined to be in the side yard, and the well is in the rear.

Mr. Flaum proceeded to explain what is being proposed; it is a 2 bedroom house in disrepair. The house has a foundation of block and dirt. The concept is to create a full basement under the addition in order to house the furnace and hot water heater. The concept for the long term was to add the addition for support and to house the furnace and hot water heater, in a non freezing environment, and repair the existing structure one section at a time. There is not much space to do any repairs under the existing structure because of the furnace and hot water heater being there.

Frank quickly asked if this were safe, Mr. Flaum replied relatively. After reviewing the photos again Frank suggested that a structural assessment would be needed to assure him that the existing structure can support the addition because of the condition of the existing foundation. He expressed his concern for an analysis for distress, soil capacity, walls, footings, there is a lot of visible rot in the photos, etc. Something goes wrong down the line, should the building collapse, a law suit could look at the fact that the ZBA gave you approval for an addition to a building that may or may not be structurally sound. I have some real concerns here, I want to make sure this building can hold up and support construction. I want to see the long term plan for repair. Mr. Flaum reassured him that although there is visible rot, the floor joists are ok. Jeff asked who could make a structural assessment, the answer the building inspector.

Mr. Flaum replied that there is a long term plan, this is a weekend home for the family that has 2 children. The reason for the repairs is to improve the quality and value of the existing home. The reason for the addition is the first step in the long term plan for repair, repairs are being done in stages in order to accommodate what the family can afford to do.

Hilarie asked how the family had been appraised for a mortgage with the structure as is, when was this property purchased. This could address Frank's concerns unless it was an as is sale. Mr. Flaum answered that the property was purchased in 2003, and he had no knowledge of the mortgage. Leslie voiced that she would need to visit the site. Jeff asked if there were any other comments, Frank made the following suggesting;

1. foundation plan of existing building
2. decide what you want to do, draw & measure put it all on paper
3. date & sign your plan so that the building dept knows what your plan is
4. floor plan - what will be replaced, and what will be repaired
5. long term plan

He continued that a certificate of occupancy, could depend on the safety issue. Look at the old building to be sure it can with stand the addition.

Jeff asked the question of the other ZBA members whether or not to schedule a public hearing depending upon the receipt of a structural analysis. It was agreed to schedule the hearing for October 22, 2009, tentative upon the structural assessment. This application would also need to be sent to the Planning Board for review.

Mr. Flaum replied that the owner of the property would need to make a decision. Jeff asked him to submit the structural assessment 10 days prior to the Public Hearing.

Hilarie made a motion to accept this application and to schedule a public hearing, tentative the structural assessment, for the October 22 meeting. This was seconded by Frank & Mike. The motion carried, unanimously.

Ed Ferratto, the Building Enforcement Officer offered an opinion that it was not the job of the Zoning Board to ask for safety of the structure, that is the Building Inspectors job. The ZBA looks at the variance issue.

Frank read from Zoning Law Chapter 232, chapter 24, section A.1 Modification, ... *a nonconforming building or structure shall be maintained in such condition as will not constitute....*

Jeff continued that it also goes on to say in section 2 *a nonconforming building or structure shall not be added to, enlarged, reduced, or alter.....*

Discussion ensued regarding conforming, and nonconforming, interpretations of building on the side option, he would need to verify where the exact location of the septic tank. You cannot build over the septic tank.

Discussion went to the Nielsen case # 2009-01, Jeff informed the board that Lawrence Howard, town attorney would attend the next meeting providing the Nielsen's have all the required documentation. He continued that after conferring with the Attorney, that easements are a civil issue, a matter between the parties. There is a difference in cases involving premeditated and after the fact. These issues need to be kept in mind for the next meeting.

New Business:

Jeff brought up the issue of the fence, and asked the board to think about some additional wording to clarify the height issue. Is the post part of the fence? How do you measure, from the ground up? The intent is for the visual, but the wording needs to be clear for any future case that may come before us.

Old Business:

By-Laws Changes: tabled

Application Check List: The ZBA members reviewed the revisions that had been suggested at the last meeting and through consensus decided on a version that Michael had created with a few more revisions. He made note of the suggested revisions and agreed to make them and would E-mail the new check list to the members for approval.

Adjournment:

Leslie made a motion to adjourn the meeting, this was seconded by Michael. The motion carried, unanimously.

The Next Meeting is October 22, 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**