

TOWN OF COPAKE  
ZONING BOARD OF APPEALS  
MINUTES - DECEMBER 28, 2006

A regular meeting of the Zoning Board of Appeals of the Town of Copake, NY, was held on Thursday, December 28, 2006, at the Town Office, Copake, NY, and was called to order by Chairman Clark Simms at 7:00 p.m.

Board members Clark (Mac) Simms, Julie McKenna, George Ashley, Frank Peteroy and Stanley (Stosh) Gansowski were present. Alternate Board member Louis Kibler was absent.

Board members were introduced and the MINUTES of the previous meeting held October 26, 2006, were discussed briefly. Chairman Simms summarized the Minutes by highlighting matters discussed and action taken; also noting the Board did not hold a meeting in November. Stosh Gansowski moved to accept the Minutes as written, which was seconded by Frank Peteroy and unanimously carried.

NEW BUSINESS:

Chairman Simms reported a letter was received from Robert Trotta, from the Law firm of Davis & Trotta, representing *13 Lackawanna Properties LLC/Salvatore Cascino/Duksa*, requesting information from the ZBA's file, to which Chairman Simms said he responded.

Another letter was received from James Boglioli, Law firm of Whiteman, Osterman & Hanna, requesting information under the Freedom of Information Law pertaining to the *Copake Country Club* related to building permits/ applications/approvals/violations, etc. Chairman Simms said he replied to the letter requesting more specifics in order to narrow the search.

Julie McKenna asked if all Town departments receive copies of a FOIL request, as she was aware of another request to which they did not receive a copy.

Mac said a copy should be given to all departments covered by the FOIL request.

Stosh said that all information related to *Lackawanna* has to go directly to our Town Attorney.

PUBLIC HEARING:

2006-18 - Application of CRARYVILLE FUEL LLC for a Special Use Permit to operate a convenience store and car wash.

Applicant Mohamed Ibrahim and his representative Gary Beck were present.

Letters were sent to adjoining property owners with return-receipt cards received from all and the matter was duly published in the local newspaper.

Chairman Simms reported the property is located in a B-R zone in which a convenience store and car wash are prohibited. If it predates zoning and is a continuous use with no lapse of a year or more, it would be a 'grand fathered' use. The applicant applied first to the Planning Board for site plan review and was referred to the Zoning Board. An excerpt from the Town Planning Board's Minutes related to this matter is made a part of these Minutes and attached hereto.

Chairman Simms' notes related to this matter and the history of the property are made a part of these Minutes and attached hereto.

Adjoining property owner John Ohlerich was present and questioned whether all abutters received letters, noting one party who was sent a letter was deceased (Diedrich Bottjer).

Julie reported all return-receipt cards were received.

Mac summarized Mr. Ohlerich's concerns which were expressed at the Planning Board's meeting and in writing (copy attached).

Mr. Ohlerich asked if the applicant was requesting use for a gas station, store and car wash.

Mac said the application is for a store and car wash.

Mr. Ohlerich asked if the store included gas pumps, and Mac said it did not include gas.

Gary Beck said they are asking for a car wash and retail/restaurant space, and said the building is less than 3,000 square feet, which is permitted in a B-R zone. He said the pumps are no longer there and they need permission for extension of the car wash.

Mr. Beck submitted a packet of information to the Board members, which is made a part of the Minutes by reference.

Stosh asked about controlling water from the car wash.

Mr. Beck said they first need to establish a car wash and noted it might not be feasible to do if it becomes too expensive. He said they also need building permit approvals.

Julie questioned drainage and Mr. Beck said there would be one self-serve car wash.

Mac noted that Bob Matthews stated at the Planning Board meeting that he opened the car wash once a year to maintain usage, but it was questioned whether there was proof that it was used by the public.

John Ohlerich said he has documentation going back to the year 2000, and said they are still monitoring the neighboring wells and there is no indication of stopping.

Frank Peteroy asked for clarification on this, and Mr. Ohlerich said it is being monitored by the Board of Health.

Julie questioned documentation on permits or signage, to which there was none. She spoke to Ezra Link, Sr., who worked as a mechanic when Dykman owned the property. He worked there in the 1960-70's and again for two or three years under the new owner and when Patsy owned it.

Mac said there was no evidence of its use as a car wash.

Stosh noted that other organizations, such as the Taconic Shores Property Owners, open/close for one day to maintain their status.

Ed Ferratto asked if there were any receipts from the car wash or information that may have been submitted on a tax return.

Mr. Ohlerich said the car wash was used for storage when Mr. Matthews owned it, and the last time used as a car wash was when Patsy owned it.

Mr. Peteroy asked where the well was located and Mr. Beck said it was a 'point' inside the building. Mr. Peteroy asked if it was tested, and Mr. Beck said it is required that they be monitored quarterly and said it is good potable water.

Mr. Peteroy questioned the septic system and Mr. Beck said it is to the right of a metal container on the east side and consists of two concrete tanks (1,000 and 1,200) and small leaching field.

Mr. Peteroy asked if they will be drilling a new well, and Mr. Beck said yes and indicated the location on the plans and said everything will meet Board of Health approval.

Stosh asked about a stream on the property.

Mr. Ohlerich said there is some run off and indicated the location on the map. He said there is always water running.

Mr. Peteroy requested information on well #7 and Mr. Ohlerich said he could provide a report.

George Ashley questioned the water on the property and whether it flows all the time.

Mr. Ohlerich said yes and said there is a culvert for the water drainage.

Mac said the car wash has to be established more clearly that it has been a continuous operation by means of tax records or statements from people who have used it.

A letter from the Town Building Department dated 2005 did not specify a car wash.

Substantiation that it was in use by the owners from 1994 on was needed.

Mr. Beck asked what would be acceptable and Mr. Peteroy said a certified/notarized letter from owners.

Stosh said they could get a notarized affidavit from Mr. Matthews stating it was used as a car wash.

Mr. Ohlerich said he would also send a letter saying it wasn't run as a car wash.

Stosh said they may then have to turn the matter over to the Town Attorney.

Mac said there is another issue, even if it is 'grand fathered.' Even if continuous use as a car wash is established, concern to prevent expansion of ground contamination might preclude granting a special use permit. He said there are conditions which have to protect them and the neighbors.

Mr. Ibriham said the water from the car wash would be re-cycled. Mr. Beck said they would also get SEQRA approval.

Mr. Beck said they need the restaurant/retail permit so they can go back to the Planning Board.

Julie suggested they close the public hearing and ask for additional information.

Mac said he would be open to additional material being submitted.

Mr. Ohlerich said he has been in contact with Mr. Bottjer's daughter, who lives in Florida, requesting she submit her comments.

It was noted that restaurants and retail stores under 3,000 square feet are permitted.

Stosh asked what type of restaurant it would be. Mr. Ibriham said it would be the same as the one he has at the intersection of State Rte. 22 and County Rte. 3 in Ancram and it would have seating and grocery items.

Mr. Ohlerich noted Route 23 being a major truck route and was concerned with trucks parking in his front lawn. Mr. Peteroy said this would be an enforcement issue.

Mac said, if they wish to pursue the car wash, additional information would be required: Department of Health and SEQRA approval; statements, including dates, during which the car wash was opened; what business was done; notice of business in newspaper; signs indicating the business. The Board could then proceed with this matter.

Julie moved to close the public hearing.

Stosh said if they could show that the water is removed properly, he would be in favor if it meets all standards. He then moved to second the motion to close the public hearing. Motion unanimously carried.

George Ashley left at this time - 8:15 p.m

OTHER BUSINESS:

Section 232-24 of the Code of the Town of Copake was reviewed and discussed.

The proposed changes are made a part of the Minutes by reference and attached. They will be further discussed at the January meeting for adoption.

Julie asked about the Margaret Roche property as she said Ed Ferratto wanted to clarify an issue related to the property.

Mac said the property is in an R zone and there is a garage on the property that needs to be torn down due to insect damage. A new garage would be put up on the same footprint.

Julie said she did not think we should consider a hypothetical case until it comes to us.

Mac said he did not think there was any need for it coming before us.

Mr. Peteroy said they should submit a sketch to the building department.

Stosh questioned the status of the Murnane (Folger's Pond) property on Farm Road.

Mr. Peteroy said he is waiting for information from Ed Ferratto which he requested several months ago.

Mac said the Building Department measured the set backs and they said it was in conformity; then there was a question of it being a corner lot.

Mr. Peteroy said he wants two dimensions - one from the pond and one from Farm Road, to the building there now. He said he asked to be on the property and was denied.

Julie asked what "figures" are adequate that the building department said are adequate. She noted this would be put on the agenda for next month's discussion.

Mac said it is not a zoning issue, but Stosh said it was discussed in the Minutes, which is why he brought it up.

Diane Cinque, audience member and abutter to the Murnane property, said prior to September she was concerned about the set backs and the positioning of the proposed building.

Mac asked if Ms. Cinque went to the building department.

Mr. Peteroy said he and Tom Cinque went to the building department. He noted the building that was filed is not what is being built.

Ms. Cinque said her concern was prior to the foundation being put in.

Mac said the building department is responsible to see that plans are followed as submitted.

Stosh said the Zoning Enforcement Officer is also responsible as he signs off on building permits.

Mac said the Zoning Enforcement Officer will become Code Enforcement Officer and will become a part of the building department.

Mr. Peteroy said, once he gets the two dimensions, he can then make a decision and give his opinion.

Julie left at this time - 9:15 p.m.

The CHECK LIST for submitting applications to the ZBA was reviewed and discussed.

A few changes were suggested and it was agreed the "fee scale" be eliminated.

Mac commended Mr. Peteroy for a job well done on this "check list" which Frank will revise  
Minutes - Copake Zoning Board of Appeals, December 28, 2006

-5-

to be further discussed and adopted at the January meeting.

Diane Cinque asked what "passive recreation" meant in the zoning, and no one was sure of the exact meaning.

There being no further business to discuss, Stosh Gansowski moved to adjourn at 9:25 p.m., seconded by Frank Peteroy and unanimously carried.

Respectfully submitted,

Louise Miller, Recording Secretary

/lam

Attachments are available in Town Hall

1. Mac Simms memo on "ZBA Craryville Store Case"
2. Craryville Fuel LLC additional information
3. Letter to ZBA from John and Claudia Ohlerich
4. Letter to the Planning Board from John and Claudia Ohlerich
5. Section 232-24 of the Code of the Town of Copake I-III
6. Relevant sections of Section 232-3 of the Code of the Town of Copake (Definitions)