

**Town of Copake  
Zoning Board of Appeals  
Minutes- December 16, 2009**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Wednesday, December 16, 2009, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. This change was due to the Christmas Eve holiday falling on the 4th Thursday. The meeting was called to order by Chairman, Jeff Nayer at 7:00 PM.

Present at this meeting were: Jeff Nayer, Frank Peteroy, Michael DiPeri, and Hilarie Thomas. Shawn McClain and Leslie Wood were not present. Attorney, Howard Lawrence was also present as council to the ZBA. An audience of about 5 were present.

**Minutes:**

The minutes of November 18, 2009 were reviewed. Jeff requested that a change be made to page 2, paragraph 2. Should read: *Linda Chernewsky of Morris Associates was present to represent the applicants. The plans were reviewed, Frank questioned the locations on the map. Ms. Chernewsky pointed out the Luchow's owned 1 lot, near the Beenstock residence and Grant Drive.....*

Frank made a motion to accept the minutes with the corrections, this was seconded by Mike. The motion carried. Hilarie abstained since she was not in attendance at the November meeting.

**Correspondence:**

The following correspondence was read;

1. Todd Mathes, Esq to Zoning Board of Appeals, 12/4/09. As it pertained to the Public Hearing, reading was postponed.
2. Copake Planning Board to ZBA 12/5/09. It's recommendations to application 2009-06, also postponed the reading to Public Hearing.
3. Columbia County Planning Board to ZBA 12/16/09. It's recommendations to application 2009-06, reading postponed to Public Hearing.
4. Columbia County Planning Board to ZBA 11/20/2009. It's recommendations to application 2009-01, reading postponed to Public Hearing.

**Public Hearings:**

**Application 2009-01, Mark & Lisa Nielson, SW Colony Rd. , Copake Lake: Area Variance for a building within 100 feet of the lake:**

The Public hearing which had remained open from July 23, 2009 was re-opened.

The 12/4/ 2009 letter along with large packet of information was read and reviewed.

Todd Mathes, Esq. was present representing the Nielson's.

Jeff opened with a question regarding the new information, specifically the # 1 footnote at the bottom of the cover letter. *As previously confirmed by the Town, aside from the water body setback, the location of the cabana complies with front, side and rear yard setbacks required under Zoning law as well as all other use and dimensional regulations set forth under the Zoning Law.* It is my understanding that this is not what was meant by hypothetically cabana might meet setbacks if house were built in a certain way. There have been no site plans presented to the Building Department. On the assumption that the house is to be built as presented in this most recent plan, I don't know of any other variance other than the lake setback? Todd replied that the assumption was of the latest proposal recently submitted, with the house and driveway as depicted in the most recent plan with the front yard showing toward the road, so essentially the cabana would be placed in the rear yard. Jeff responded that the assumption is what is shown in this letter, the things written here may not come to be, for instance the foundation of the house may need to be moved slightly due to rock or that the driveway may need to be moved or angled for pitch.

Jeff continued to question the information page 2 paragraph 3, *The Zoning Board appears to believe that the area variance requested by the Nielson's should not be granted because my clients have not demonstrated any "hardship" which would merit granting the relief requested. Also, the Zoning board appears to believe that the variance should not be granted because my clients may intend to sell their parcel at some future date. I don't believe that when we read the criteria they needed to prove a hardship, a self-created hardship is considered but not necessarily a determining factor in decision making.*

Frank again informed the attorney that the drawing was wrong, this drawing indicates the Town of Ghent, not the Town of Copake. These plans need to be consistent with the town with which they pertain. If the Engineer makes a mistake, he and only he can correct it. This alone is reason to throw the plans out. It is not the first time that I've mentioned this. Attorney Mathes assured the board that new plans could be supplied. Although the title block does say the Town of Ghent the property is obviously in the Town of Copake. The Engineer had a concern with changing the title block, and since it wasn't relevant to the proposal it was not changed. Frank interrupted and said that it was absurd, the Engineer is wrong if something is wrong it needs to be corrected by him.

Frank handed out a memo dated 12/14/09 and read:

*In the opinion of this member, conditions for approval are:*

*1. Install manhole as required by the Columbia County Board of Health. The Engineer may not determine its necessity. ( The purpose of the manhole is for inspections during the lifetime of the use. Physical inspections of the piping, connections etc. , is periodically required. As noted by Jeff Nayer, motors that are shut down, taken out of service for the winter, can be reluctant to restart in the spring. Long term maintenance is a real concern of the Town.)*

*2. All concrete tanks shall be of monolithic construction, properly bedded n gravel/sand. split tanks are not permitted. Metal tanks are not permitted. Seals shall be properly installed. All shall be as approved by the CCBH. All connections shall be inspected by the CCBH & approved.*

*3. Cabana shall be constructed on a concrete foundation of frost walls & footings, all work per the NYSBC & local requirements. The footprint of the cabana shall not exceed 7 feet by 15 feet for two changing rooms & a toilet, lavatory, shower room, water tank & hot water heater. For the screened porch, an area of 10 feet by 15 feet is acceptable for storage of beach chairs, canoe, paddles. Porch may not be enclosed other than screens. Roof pitch shall not exceed the 4 in 12 standard. There shall not be permanent cooking facilities; a small refrigerator is permitted, 5 -10 cubic feet. No loft for sleeping.*

*4. The Cabana shall meet side yard setbacks, shall not interfere with any rights of ways permitted by deeds of abutter. It would be preferable to place the septic tank, the pump tank & the manhole closer to 100feet from the shore, understanding pipe pitch & building elevation, etc.*

*Frank E. Peteroy*

**Jeff added that The County Planning Board has brought the attention to the Board of Health approval would need to be for a 3 bedroom house as what appears in the plans, not the 2 bedroom that the BOH septic has approved. The issue of asking for an accessory building is speculative to the house being built however not even a building permit has been issued. It's putting the cart before the horse. Your clients are asking for an accessory to what? On the speculation that this building will be built as drawn. With no other building there not sure if it is to be considered the primary or accessory building. Normally the process is that the applicant would have received a permit to build a house and then submit an application for a variance for the accessory building.**

**Mr. Mathes again attempted to explain that the proposal for the house was conditional to the approval of the accessory building. It could be an acceptable condition of the granting of the variance, with the stipulation that No building Permit will be issued for the accessory building without the permit for the primary house, oriented or positioned as shown on the**

plans. I have no knowledge of any zoning law that would require us to apply for the residential house building permit prior to applying for the relief in this variance.

Frank mentioned that the cabana cannot function without the house. It relies on the primary systems such as electric, septic etc to survive. The conditions would be a red flag to the building department, nothing happens on this lot until main residence is built. I have no problem with an approval pending issuance of a building permit for the main house, because you don't get anything until the primary building and septic are built, with the manhole. He made reference to the many homes along the shoreline further up the road. It would be consistent with the neighborhood, even though they were built in the past, we inherit them.

Jeff reminded him that the electric and septic could be brought to the cabana without being first tied into the main residence. Frank corrected him stating that you could not get the permits to do that.

Discussion continued regarding the acceptance of these conditions, would the Nielson's agree to them. Attorney Mathes assured the ZBA members that his clients were agreeable to this. Mr. Mathes again stated that it would be a 20 x 20 building with a high roof, he was not prepared to accept any variations of this plan without his client's input. A question arose as to what do they get then. Frank answered by saying that they get a piece of property that is marketable. Whether that be there intent or not, I can't say, but that is what happens. Mr. Mathes said, " to be totally candid we strongly believe that there is a very strong benefit to being able to have the structure on the lake side of SW Colony Road, without that we don't think there is value in this parcel. Frank again said that restrictions would apply, it is a cabana or changing room. There will be no sleeping, no cooking. It is not a miniature doll house. I am asking for the septic to be 100 feet.

Jeff reread the criteria for granting an area variance, and clarification of what was being requested. Attorney Mathes stated that the proposal was for a 20 x 20 structure, he was not able to see why all the constructive criticism for the size of the structure was relevant to the proposal. He continued that it would be as proposed within 50 feet from the lake. Frank suggested then by definition you are not asking for a cabana you are asking for a shed, in your proposal you are asking for a changing room, toilet, and storage space. This does not require 400 square feet. A cabana would be a 5 x 5 or 3 x 5 building. Attorney Mathes replied that his belief of the underlined use of the structure is the issue.

Discussion then went to the character of the neighborhood. Jeff read a portion of the Attorney's letter (page 2, bottom of paragraph 4) "*Finally, the cabana will be setback from the lake in conformity with, and in many instances a greater distance than other homes and much larger structures along Southwest Colony Road. See Id. at 693 (acknowledging that the existence of many other nonconforming structures on neighboring lots meant that there would be no harm to the character of the community.)*"

Mathes pointed out that all other houses have something similar, it would not be a detriment to the area. The septic is specifically designed to protect the lake, the storm

water controls, which are not required, will be in place during construction, and from our perspective there are no detriments or impacts here, but there are certainly benefits to the applicant.

Jeff replied that the 100 feet restriction from the lake was put in place in 2006 to protect the lake. I have a real concern that this would be setting precedence, and not to mention that this is all based on a hypothetical on paper only plan. He then asked the ZBA Board members if they were ready to act on this as it stands? He asked the audience if there were any further comments, Mr. Mike Melnick rose and announced that the proposed septic system would be within 150 feet from his daughter's well. I think that this system will be too close to this well. Frank asked him to come forward to point out on the proposed site plan the locations of the well and the proposed septic. Frank stated that he would need to investigate the distance of this well in conjunction to the proposed septic system. Mr. Melnick also stated that the stakes recently placed on the property showing the location of the house were on his deeded right of way. Jeff again said that rights of way were a civil matter. He reviewed the site plan and saw that there would be 19.3 feet on one side and 20 feet on the other side of the proposed building. Mr. Mathes showed Mr. Melnick the location of the rights of way on the map.

Jeff asked if there was any further discussion, he stated that we as a board should be satisfying all the issues before the board. Mike and Hilarie had no additional questions or comments. Frank stated that he would need to check the location of the well, as new evidence was presented this evening. Mr. Mathes stated that obviously, we will comply with any condition set by the DOH, concerning this well, and that it could be a stipulation of approval pending the location of this well in conjunction with the proposed septic. Frank also stated that the drawings needed to be corrected to reflect the Town of Copake, and this is the third time we've talked about this issue.

*Hilarie made a motion to close the Public Hearing. Frank seconded this motion. The motion carried, unanimously.*

The ZBA Board members than asked for a brief conference with Attorney Lawrence Howard. He stated that by law there are 62 days from today at the close of the Public Hearing for you to make a decision by vote should you want to postpone your decision. So watch your deadline. His additional comments were 1. Original application had both a use variance or an area variance. That confusion is still real there is a question what that building will be used for. Whether it's an accessory building or primary building and then once it is built you have lot coverage issues as well. So is this the only variance that will be needed, it might not be. 2.. Dangerous precedence on the hypothetical, I've never seen that done. 3. Area variance use has not be granted since 2006, and granting this application will make it hard to control the shoreline for the future 4. SEQR- type 2, no further action would be needed here.

*The ZBA Board clarified that they would be voting on the conditional approval of an area variance on an accessory building pending the main house to be built first. The cabana and*

*septic system pump would be closer than 150 feet from the lake. The building would be 20 x 20.*

Jeff asked for each board member to speak prior to the vote. Frank stated we do not want a 20 x 20 building, we want a cabana, a place to change your clothes, store lawn furniture, get a cold drink, and go to the bathroom. The building proposed is a shed not a cabana both are accessory buildings but both with different uses. The restrictions that I proposed are simple, they, the applicants have to adjust to the conditions that we have put into place. In line with council, to approve a 20 x 20 building; what would the impact be, it is my opinion that we would be setting precedence, the area is cursed with a series of buildings built in the past prior to zoning. Jeff stated that a cabana is a smaller building, it is for changing. You are suggesting a shower, with a hot water heater, a mini house. We still need to decide the 100 foot setback issue with what is proposed a 20 x 20 building. Are we prepared to vote on this issue now. He then addressed Mr. Mathes with the question of whether his clients would be willing to adjust their plan to comply with the stipulations the ZBA has suggested. Mr. Mathes responded that he wants to understand what is the position of the board in respect to the size and use of the building and would be willingly go back to his client with the suggestions. They want an adequate size for a full bath with lots of storage, 20 x 20 with an 8 pitch roof, is not very big. Jeff announced that the last time the Nielson's were present the ZBA board gave them a fairly clear opinion in regards to the size of the building and the setback from the lake. I'm just not comfortable with this, he continued.

*The decision was made to vote on this issue: Jeff: NO, Mike: NO, Hilarie: NO, Frank: ABSTAIN. The request for the variance was denied. The written decision would be issued next week.*

Attorney Howard was asked what the ZBA's position would be regarding an upcoming application should DEC approval not be granted. Attorney Howard informed the board that they cannot super cede the DEC. No building permit can be granted without the prior approval of DEC since this property is within the wetlands. He told the board that they could grant the variance pending DEC approval

Application 2009-06, Sharon & Jed Luchow, 4 Grant Drive, Copake Lake, Area Variance; addition to house, height of 2nd story.

The Public Hearing was opened. Jeff asked if anyone present wished to speak, no one asked to speak. Jeff asked if all abutters had been properly notified, yes via certified mail.

Ms. Linda Chernewsky of Morris Associates was present representing the applicants. Jeff read the letter of recommendations from the Columbia County Planning Board and the letter of recommendations from the Copake Planning Board. The Copake Planning Board expressed concern regarding how the area around Copake Lake was changing, and made note of a well on an abutting lot but the well and septic were not indicated on the

Luchow plans. Ms. Chernewsky submitted revised plans as requested by Frank at the November meeting, and she informed the board members that the Luchow's were agreeing to a 15 foot easement, as required by the Health Department. She also presented to the board some additional information that they had requested in regards to the neighborhood. The ZBA reviewed this information, the height of the Power residence was 30', and neighboring houses were of similar height. Non-Conforming lots within the area zoning limits the height of these houses to 25'. Relief is being requested to allow for the building code regulation of headroom in the stairway to the second floor. Discussion of spiral stairs ensued, however they would not meet code. The applicants are requesting for a 2' 8" above the allowable 25' height variance.

Frank asked questions regarding support of the new construction. Linda explained that structural columns and girders were being used. That the stamped engineer approved plans should attest the integrity that the building will support the additional weight. Frank insisted that the 8" existing block was not load bearing block, they are simple open cell 8" block, the footings just adequate, the terrain in a wetland, with water 5' below grade. He asked that a letter be issued from the structural engineer certifying that the existing foundation walls will support the additional weight load of the second floor. Linda informed him that it would not be a full second floor, and that they were increasing the roof pitch which would distribute the load more evenly. Frank read part of an article, entitled *Imposition of Conditions: The Board of Appeals shall in granting both use variances and area variances shall have the authority to impose such reasonable conditions and restrictions as are directly raised and related to incidental to the proposed use.*

Approval of this application would be contingent upon this letter from the structural engineer stating that the proposed plans will support the additional weight load. The letter needs to be sent to the Building Dept, with a copy for our file.

Hilarie expressed disappointment with all the development going on at Copake Lake. Growing up, it was just a community of small summer cottages, now it is becoming year round "McMansions".

*Frank made a motion to close the Public Hearing, this was seconded by Hilarie. The motion carried, the Public Hearing was closed.*

*A roll call of a vote to approve this area variance for a 2.8' height variance contingent upon the receipt of a letter from the engineer certifying that the existing perimeter walls will carry and support the additional load. Mike: Yes, Jeff: Yes, Frank: Yes, Hilarie: No. The variance passed and the building department will be notified, so that a building permit can be issued this weekend.*

### **New Applications:**

**Application # 2009-07, Rolando Cohen & Linda Larach, 24 Pond Hill Rd, Area Variance, 100 feet setback in a wetland.**

**This family has a severely disabled child, he is blind and cannot walk. The house is on 3 levels and right now the child can be carried from level to level, but in the future as he gets older and heavier they will not be able to carry him. Linda showed the board the proposed plans explaining that the playroom is on the first floor, with 5 steps up to the family room/bathroom/bedrooms, and 5 steps down to the kitchen. The plan is to re-configure the bedroom area, the child's bedroom requires a handicapped accessible bed, and the child's bedroom will be closer to the parents' bedroom. The hallway is widened for a wheelchair. An elevator to the upper floors and ramp to the outside will be added so that the child can go from one level to the other.**

**Frank asked if there is enough turning radius for the hallway and bedroom. He questioned the drawing's shaded walls are new? Yes, we went the minimum to allow for all the upgrades and the handicapped room. Jeff asked if there is a fire how do we get him out safely? Linda continued to explain the proposal, the current foundation is cantilever, will be sured up with sonar tubes (big foot) and columns for support. The floors are of 2 x 8, they will need some upgrading to make the building structurally sound. We are trying to use as much of the existing foundation as we can. There is a 13 foot drop to the pond. The exterior walls will be upgraded and insulated. Frank asked whether the building would be over the septic lid. No lid is near the ramp and deck but not building over it. Concern was expressed for the doorways, is there room to get a wheel chair through? Again Linda replied that it will be tight, there is just enough room, but because of the elevator and the handicapped bedroom we were limited. The foot print of the house would be increased 2.3%.**

**Hilarie questioned that an ADA doorway was 36" wide. Jeff asked Linda for a physician's letter for the file and referral to Planning Board documenting the child's disabilities. He suggested that DEC be sent a copy of this as well. Linda was reminded that DEC would need to approve this plan since it is primarily in a wetland.**

*Hilarie made a motion to accept the application and to set a Public Hearing for the January meeting. This was seconded by Frank. The motion carried, unanimously. The Public Hearing is set for January 28, 2010.*

**Linda asked about a new application that would be forth coming, a height variance had been previously issued to this applicant and now they are considering applying for a side yard variance on Golf Course Road. The property is unique since it is very steep, retaining walls would be needed.**

**Jeff notified the ZBA that an application from Bruce Haight Builders could be coming.**

**No application was received from Costello, Copake Lake.**

**Old Business:**

**By-Laws Changes:** Everyone was given a copy of the requested changes, they should be reviewed and will be gone over next month.

**Application Check List:** tabled to January.

*Frank made a motion to adjourn this meeting, this was seconded by Hilarie and Mike. The motion carried. The meeting adjourned at 9:30 PM.*

**The next meeting will be held on Thursday, January 28, 2010, at 7:00 PM.**

**Respectfully Submitted,**

**Theresa A Traver  
Recording Secretary**

**attachments: By-Laws Changes  
Memo - Frank**