Town of Copake
Zoning Board of Appeals
Minutes – February 28, 2008

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, February 28, 2008, at the Copake Town Office, 230 Mountain View Road, Copake, NY. Chairman, Stanley Gansowski called the meeting to order at 7:00 PM.

Introductions began the meeting; roll was called with all ZBA members present; Stanley (Stosh) Gansowski, Jeff Nayer, Shawn McClain, Frank Peteroy, Leslie Wood Strom, and alternate Louis Kibler.

An audience of approximately 6 were present, including, Clark (Mac) Simms, Town Board Member, Bob Sacks, and Ed Ferratto. Applicants, John Mengler, Jr, James Grahn, Andy Phesay, and Mr. Guy Winig, representing Michael and Anne Gershon were also in attendance.

<u>Minutes:</u>

The minutes of the previous meeting held January 24, 2008, were reviewed. Mr. Peteroy requested that page 4, of the minutes be corrected to state that he would do the follow up with Pace University regarding training schedule, and that the date on page 3, Public Hearing; was incorrect, and should be 2/28/08 not 2/21/08. A motion made by Shawn, and seconded by Jeff, to accept the minutes with the corrections.
The motion carried.

<u>Public Hearing:</u>

<u>Application # 2008-01:</u> John Mengler, Jr, UnderHill Inn: Special Use Permit to re-open as a restaurant. All abutters were notified, all return receipts were signed and returned, Notice was duly published in *The Register Star* and *The Independent.* No correspondence was received regarding this matter, and no one in the audience came forth to speak against. Frank commented that the septic issues rose by Shawn

during the meeting of 1/24/08 were Health Dept issues, and Shawn agreed, also adding that if there were no other stipulations in place for any other business, it would be unfair to request this of the applicant. Frank continued asking Mr. Mengler to re-evaluate the entry and exit of the parking area. Revised maps were reviewed, Leslie raised the issue of the handicap parking area, would it not be better to have the cars release handicap persons at the ramp, rather than in the parking area?
Jeff reminded Leslie, that handicap parking could mean that the driver was handicap and the new parking design was a minimal change, and could not foresee a problem.
Stosh asked if there was any other comment from ZBA Board Members, hearing none, then asked for any public comments: at this Mac Simms raised the issue of the Anthony Street/ route 22 intersection hazard, and asked if the Town Highway Supervisor and the State should look to see if there was something that could be done to make this intersection safer. The board agreed to notify the Town and State regarding this issue.
There being no other comments, Leslie Wood made a motion to accept the application with the revised parking and grant the special use permit for the restaurant. The motion was seconded by Shawn; all board members were in favor. The motion carried.

<u>New Business:</u>

<u>New Appeal:</u>

<u>Application: 2008-02, Andrew and Patricia Phesay, Copake Lake, Special Use for an Addition;</u> Mr. Phesay was present to answer questions. He was asked to clarify his request, he informed the board members that his plans were to remove an existing deck and replace it with an addition to one room and a mudroom. Changing his dwelling from a 2 bedroom to a 3 bedroom.
At this Jeff informed him that a 3 bedroom had different Board of Health requirements for septic systems. He would need a larger septic. Frank then asked him about the Easement agreement, it was noted that tank (500 gal) & field are on neighbor's property. Mr. Phesay explained that his leach field was on lot 210, the neighbor, and the

easement for the leach field was deeded, but stipulates that it is for maintenance and repair, not for enlargement.
At this point, the maps were reviewed and Mr. Phesay was asked which lots were owned by him, and which belonged to the neighbor. Lots 211 and 212 belonged to Phesay, the neighbor owns lots 210 through 205, with the house on Lots 207 & 206. Mr. Phesay's lot is a corner lot bordered by streets Van De Carr Drive and Starling Road, each lot being 25 X 100. The photos were then reviewed, Mr. Phesay explained that a tree would be removed, the roof line would remain the same, no higher. Stosh asked if the plans were for an increase or would the building stay within the same footprint? Leslie asked the other members for clarification if the lot was larger would he not need to go before the ZBA, it was established that the undersized lot was the issue. Jeff asked current square footage of the existing house, and the proposed square footage. 858 sq ft currently and with the proposed addition the increase will be 1090 sq ft.
Mr. Phesay was then asked how far from the lake, and where did he get his water. Mr. Phesay replied that his water came from a well, which was under his house. At this Frank, asked how was the land sloped, and what was the location of the septic and the well. After reviewing the maps it was established that the septic was above the well. Frank noted the "plume" of contamination from the higher septic may be affecting the quality of the water and asked if the well water had been recently tested. Mr. Phesay informed him that it had been tested last in 2002. Shawn stated that this is an issue for the Board Of Health. Jeff asked if this application needed to go back to the planning board for a site review. A discussion incurred regarding what happens with a lot so small, and what are the Board Of Health requirements. Louis Kibler pointed out that the section of the zoning law needed to be sited. Frank selected the appropriate code reference, 232-23-3f, *Health and Welfare.* All members of the board agreed that a review of the site plan was needed, " *Adequacy of water and sewage disposal facilities*" and that Mr. Phesay needed to contact the Board of Health. Mr. Phesay was directed to the Planning Board for a Site Plan Review and to obtain documentation from the Board Of Health.

<u>Application: 2008-03, Michael and Anne Gershon, Sky Farm Rd, Construction of swimming pool:</u> Mr. Guy Winig, representing the Gershons was present to answer questions.

Louis Kibler asked to recuse himself from this case, since he is a neighbor, Leslie 2nd the motion, Mr. Kibler left the room.

The maps were reviewed, the pool it was established to be constructed slightly front and side of the existing house, and that two 10" trees will be removed. Mr. Winig was asked why the pool would be constructed on the side of the house and not in the back yard, and it was established that the reason is the rock ledge drop of some 30 ft. He was also asked about the existing slope, and stated that the pool was designed to retain the slope and also around an existing tree at a 45 degree angle. He then was asked the location of the existing leach field, which he pointed out, was way down the hill from the proposed site. Leslie asked him what would happen if the pool were to overflow, and Mr. Winig replied that it would ride over the septic tank. Stosh asked what is the size of the septic tank? Mr. Winig explained that this special septic system was a requirement of the Dept of Health and included a dosing chamber and a raised sand leach field, because of the closeness to the neighboring property. He went on to explain that if he had to shift the pool site up the hill, if necessary to avoid the septic system area location that another tree would need to come out.

Members of the Board asked the exact location and color of the house so that an on site review could be done. Concern was raised from several members of the board regarding the volume of water in the pool, and are we certain that this pool will not slide down hill. Mr. Winig replied that he was fairly certain since it will be constructed in solid ledge, which would anchor the pool. Jeff asked about the dimensions of the proposed pool and how close to the road? The pool would be 40'long by 16' – 12' across, depth to be 3' at one end to 7 – 8' deep. Leslie asked how do you fence this in, and aren't special doors needed for home access. Mr. Winig replied that the fencing will need to be specifically constructed because of the shape and landscape, and there will be no need for the special doors required by code, since there would be no direct entry from the house to the pool area.

Stosh questioned Mr. Winig about the existing above ground propane tank, and it was answered with yes the pool would be heated, that a new tank will be buried in the same location as the existing one of the same or similar size.

Frank made a motion to accept the application, Seconded by Shawn. The motion was carried. Public Hearing set for March 27, 2008.

<u>Application: 2008-04, James Grahn, Rte 7, Craryville; Replacement of Existing Garage and enlarging it:</u> Mr. Grahn came forward to answer questions of the board; he brought photos which were reviewed by the board members. Some question arose regarding the site Zone, under sized lot; the application and map were reviewed. Mr. Grahn was asked if the proposed garage would be on the same footprint, he said it would be, but slightly larger.

Leslie examined the photos of the existing structure and asked what he would do to the proposed structure to prevent the same occurrence of sill rot. He informed the board that a poured slab will be 6" higher and grade of the ground pitched for drainage. It was determined that the proposed garage will be within 10' of the boundary.

Jeff asked if neighbor was supportive and suggested that he get a letter of such support as part of the application. Jeff motioned to accept the application, seconded by Shawn. Public Hearing set for March 27, 2008.

<u>Correspondence:</u>
None

<u>OLD BUSINESS:</u>

<u>Training:</u>
Frank reported that the next Land Use Training from Pace University would be in April. He would be notified in March of the exact date and place. He said it would very likely be the Columbia-Greene Campus. He would do a follow-up, for the exact information, and requirements of fees and registration.

<u>Appointment of Board Secretary:</u>
Stosh reported to the board members that the by-laws require the selection of a Board Secretary. After a discussion of what the job duties would be, Stosh made a motion to place the name of Jeff Nayer as

secretary of the ZBA Board, it was seconded by Shawn. The motion carried.

<u>Interview Concerns:</u>

Jeff began a lengthy discussion of issues with *Town Code of Ethics and Policy Manual*. Leslie explained that much of the concern was in the wording, for example; should could mean it is recommended, or you have to. The Board members agreed that this needed to be clarified. Boards or Committee's, Clarify serving one or two boards or committees; NY State Law states that terms are to be staggered, clarification is needed here as well.

Louis Kibler made a point of order that it is necessary in the minutes that it be noted how Board members vote. Shawn raised the issue of conflicts of interest, being an officer of a not for profit or profit board could limit you serving or voting on issues, even if you have no financial interests. Bob Sacks informed the group that it includes any management, Officer, or Corporate Executive; you cannot have any hint of impropriety, you must recuse yourself from vote.

Mac Sims suggested to the group that at the risk of micro-management of all boards that a counter proposal rather than a suggestion be a preferred avenue. The proposal could include Board Liaisons and an open invitation to Board or Committee Members to be present at interviews.

Stosh reminded them that the issue at hand was interviews. He will call the town's legal council for legal interpretation. It was agreed that all ZBA board members will have the opportunity to review and comment on the draft letter, compiled by Leslie. She will e-mail this letter to all members of the ZBA board, incorporate their concerns, and get it to the town board prior to their March meeting. It was agreed that all comments and suggestions were to be to her by 3/3/08, so that she would have the opportunity to finalize the letter and all would have an opportunity to review it prior to her sending it out.

<u>Adjournment:</u>
Shawn made a motion to adjourn, seconded by Stosh, motion carried. Meeting adjourned at 8:45PM.

Respectfully Submitted,

Theresa A Traver
Recording Secretary