



COPAKE PLANNING BOARD

AUGUST 6, 2009

MINUTES

DRAFT

Please note that all referenced attachments, comprising 19 pages, are on file with the Copake Town Clerk and in the Planning Board office. An annotated listing of those attachments appears at the end of this document.

A regular meeting of the Copake Planning Board was called to order at 7:00 p.m. by Marcia Becker, Chair. Also present were John Brusie, Chris Grant, George Filipovits, Skip Pilch and Jon Urban. Gray Davis and Planning Board Attorney Lawrence Howard were excused. Lisa DeConti was present to record the minutes.

ZONING BOARD OF APPEALS – Referrals

Although no one was present from the Zoning Board of Appeals three referrals were presented to the Board prior to the scheduled meeting.

1. BOUNDARY LINE ADJUSTMENT – MARK & LISA NIELSEN – Southwest Colony Road

Ms. Becker informed the Board that Mark & Lisa Nielsen were applying for an area variance to build a four-hundred (400) square foot cabana fifty feet (50') from Copake Lake. Mr. Grant mentioned that this had been presented before the Board prior to this and noted that the property is all one lot. He also noted that the law stated that you must be one hundred feet (100') back from the water unless the lot precludes you from building because of its shape. He pointed out that this is not the case in this instance as the lot encompasses both sides of the Road and the building could be placed on the other side of the road. Mr. Grant acknowledged that the Neilsens do not want to build on the other side of the road but addressed the fact that the law states that if there is an alternative to building within the one hundred foot (100') limit that is what should be done.

Ms. Becker pointed out that the lot is a conforming lot in the R-2 zone. Mr. Grant acknowledged the fact that the Neilsens were asking for a relief from the set-back requirement from the lake. Mr. Grant advised the Board that they needed to ask themselves whether there is an alternative in this situation to which he noted there is.

Ms. Becker noted that the Neilsens wanted to build a four hundred (400) square foot cabana twenty foot (20') by twenty foot (20'). Mr. Grant pointed out that there was a septic on the map fifty feet (50') from the lake to which Ms. Becker noted needed to be one hundred and fifty feet (150') from the lake. Ms. Becker addressed the fact that there was no one attending the meeting to represent this referral. A question arose as to whether the lot could be separated into two lots but Ms. Becker advised that a non-conforming lot could not be created. Ms. Becker acknowledged the fact that the building

could be set back to comply with the one hundred foot (100') set-back. Ms. Becker also brought up the fact that people have Right-of-Ways along both sides of the lake access lot. Mr. Urban questioned whether the proposed building had a septic to which Ms. Becker informed him that it did. Mr. Brusie pointed out that a septic was proposed for the street side of the property with the leech field across the street and the other septic on the side of the house. Mr. Urban questioned whether the septic could be put across the street with the building in the proposed location. He was advised that even if that was done the zoning law prohibits development within one hundred feet (100') of the lake front.

Ms. Becker noted that the situation was the same as when it was presented before the Board a few years ago. She pointed out that they have the room to build further back from the lake and still have lake access which would be a way of keeping them within zoning code. Mr. Urban questioned the topography of the property and whether they would be able to build further back. Ms. Becker advised him that the topography would not prevent building.

Inasmuch all the qualifications of the zoning code could be complied with regarding this property, the Board unanimously agreed that a letter would be written to the Zoning Board advising them that the variance should be denied.

2. BOUNDARY LINE ADJUSTMENT – THOMAS F. SHEPHERD – Birch Hill Road

Ms. Becker acknowledged that it was not clear what Thomas Shepherd was asking for but she believed it was an area variance. She noted that the property is on the bottom of Birch Hill Road near Route 7. She also noted that Mr. Shepherd wanted to build a six foot (6') fence for privacy as his pine trees had been damaged by salt from the road.

Ms. Becker informed the Board that she went past the property and felt the trees looked pretty healthy. Inasmuch as a four foot (4') fence was allowed, she believed Mr. Shepherd's request was for a variance to build a six foot (6') fence was not necessary. Mr. Urban questioned whether the fence would be built on the outside or inside of the trees as the fence might not be noticed if it were behind the trees. Ms. Becker stated that the variance said the proposed fence line would be at the driveway, a minimum of twenty-two feet (22') from the edge of the road to the new fence line. It was pointed out that Mr. Shepherd wanted a variance to protect his property from getting pelted by stone from the road and that the fence would be behind the trees, in the order of Road, Trees, Fence. Mr. Filipovits questioned why a six foot (6') fence would be needed to protect the property from stones as he felt a four foot (4') fence would provide adequate protection.

Ms. Becker believed alternate options could be used such as a berm or the planting of lower hedges. Mr. Urban suggested building a two foot (2') berm with a four foot (4') fence. Ms. Becker suggested a two foot (2') berm with lower shrubs. The majority of the Board believed that there were alternatives to a six foot (6') fence. Mr. Urban felt he would have to view the property himself before he could make a judgment as he believed there could be other factors for the request. Ms. Becker addressed the fact that the request also stated that traffic volume, noise and dust were all factors accompanying the request.

Mr. Grant was concerned that should a variance be granted, a precedent would be set causing a considerable amount of homes with fences in the area.

It was decided unanimously that the Board would recommend that this variance be denied inasmuch as there were alternatives to the problems as stated above.

3. BOUNDARY LINE ADJUSTMENT – JEFFREY WEINSTEIN – Lakeview Road

Ms. Becker informed the Board that Jeffrey Weinstein has a non-conforming lot on Lakeview Road that is less than ten thousand (10,000) square feet on which he wants to build a three car garage and drop the driveway down to grade so as to have room to store three cars. She noted that this would put his lot coverage way over what is allowed.

Ms. Becker questioned whether Mr. Weinstein owned all three parcels and was advised that he did. She questioned why these parcels were not combined. Mr. Grant advised her that the Board can't increase a non-conformity by law.

Ms. Becker read a letter from Mr. Weinstein which stated that he was proposing a twenty four foot (24') by thirty foot (30') attached garage to the back of his house, the same width and height as his house, essentially making the existing house longer. He also noted that this would be placed on a full basement of poured concrete cutting the steep driveway down to road level leading to the exposed self foundation which would have three garage doors. It was also noted that a lift would be placed in the third garage bay for the vintage car allowing another vehicle to be stored beneath it. Mr. Weinstein believed this would not alter his neighbor's view of the lake.

Mr. Grant clarified that Mr. Weinstein wants a variance to go over the lot coverage area and to build closer to his neighbor creating a self-created hardship. Ms. Becker pointed out that Mr. Weinstein's lot is not only non-conforming but is also less than ten thousand (10,000) square feet. Both floors of the house would have to be included in the lot coverage calculation putting his coverage way over the limit thereby increasing the non-conformity.

Ms. Becker suggested a two car garage and moving it back from his neighbor's boundary. Mr. Grant noted that the only responsibility of the Board was to consider what the proposal was and not to suggest alternatives.

Ms. Becker acknowledged that Mr. Weinstein was asking for a variance for larger than allowed lot coverage, a set-back from the side yard and to increase non-conformity. The Board also discussed the one-hundred foot (100') set-back requirement from Copake Lake and that any alteration to the driveway would violate Code 232-9.P. Mr. Pilch felt the Board had no choice but to turn down the variance.

The Board unanimously agreed that the variance be denied and a letter would be written to the Zoning Board recommending this action.

PUBLIC HEARING

None

SUBDIVISION/SITE PLAN

2009-7 MINOR SUBDIVISION – JAMES CARMODY – Hill Top Drive

Jeff Plass appeared with James Carmody, who with Helen Carmody were in the room, and presented the Board with a map of the property in question. Ms. Becker noted that the property is off Cove Road. Mr. Plass described the condition of the area around Cove Road and informed the Board that Mr. and Mrs. Carmody own two (2) lots in the area. He noted that the road cuts through the property and explained that the applicants wish to adjust things so that the road is in the right place and the property is in the right place.

Mr. Plass went on to explain that Mr. and Mrs. Carmody wish to do a Boundary Line Adjustment of equal parcels by readjusting parcels. Mr. Plass informed the Board that the property consists of two (2) Tax Maps with two (2) separate Deeds. He also pointed out that a note was put on the map stating that Parcel "A" which is the larger parcel, is not an approved building lot at this time. Ms. Becker noted that it is an existing approved lot from a prior sub-division and explained that not all the lots had been perced at the time of the sub-division. Ms. Becker informed the Board that she had spoken with Planning Board Attorney Lawrence Howard regarding this and he advised her that the Board did not need to require a Perc test at this time and should place a note on the map indicating that the lot is not an approved building lot.

Mr. Plass went on to point out that there is an existing driveway crossing the corner of Parcel "A" going to the Webber's house. He noted that it was not Mr. and Mrs. Carmody's intent to stop the Webber's from using the driveway. Mr. Plass addressed the fact that Mr. and Mrs. Carmody wanted to insure that the Webber's couldn't do anything more with it than is already there and explained that a right of way over the existing driveway had been discussed.

Mr. Grant asked for clarification of the Boundary Line Adjustment. Mr. Plass explained that Parcel's "A" and "B" are one parcel owned by Mr. and Mrs. Carmody and Parcel "C" is a separate Parcel also owned by Mr. and Mrs. Carmody next to Parcel "D" which is presently owned by Cove Property Owners. Mr. Plass continued to explain that Parcel "D" would be merged with Parcel "C" and Parcel "B" would then belong to Cove Property Owners in an equal swap.

Ms. Becker asked the Board what their feelings were regarding the note regarding the Driveway and if they felt this was sufficient regarding an easement over someone's land. Mr. Grant believed that there should be a Right-of-Way Registry. Ms. Becker said she would check with Attorney Howard regarding this. Mr. Plass believed the note would be sufficient as this as an agreed upon driveway situation. Mr. Plass added that the Webbers could formalize the driveway use through a prescriptive easement if they chose to.

Mr. Grant stated that he believed this to be a Minor Subdivision instead of a Boundary Line Adjustment to which Ms. Becker agreed. Ms. Becker requested the width of the existing driveway over Parcel "A" and Mr. Plass agreed to provide that information but noted that it would be approximate. Ms. Becker asked if everyone was comfortable with the note regarding the driveway or felt she should check with Attorney Howard. The Board was in agreement with the note and Mr. Grant added that the dimensions should be included.

On a motion made by Ms. Becker and seconded by Mr. Grant the Board voted unanimously to classify this as a Minor Subdivision, accept it as a preliminary sketch and schedule a Public Hearing for the next meeting.

Emerico Aluisio, a representative of Cove Property Owners, Inc. advised the Board that they are in favor of the Minor Subdivision of the above Parcels and would be happy to do the trade. Mr. Plass also presented the Board with the application fee from Mr. Carmody.

MINUTES

Ms. Becker asked for a motion to approve the minutes of the June 4, 2009 meeting. On a motion made by Mr. Pilch and seconded by Mr. Urban the Board voted unanimously to accept the minutes of June 4, 2009 meeting.

Ms. Becker also advised the Board that another correction to the May 7, 2009 minutes needed to be made as requested by Donna Peck. Ms. Becker informed the Board that Ms. Peck came into the office to review the tape recording which was reviewed very carefully resulting in a few changes that needed to be made.

It was noted that the following paragraph of the May 7, 2009 minutes should be amended to read.

Mr. Grant made note of the fact that all utilities need to be underground. A discussion ensued *as to whether this was a Town Law and Ms. Peck acknowledged that she was not aware of this requirement and was not advised of this by the electric company. Ms. Peck had consulted with the utility company concerning electric service to another property other than the subject property and was not advised by the electric company that the utilities needed to be put underground.* It was clarified that all NEW utilities should be underground when accessible. Mr. Davis *suggested* that utility the lines should be put underground from an existing poll on the property to the structure on the property. There was a question as to whether this applied only to Major Subdivisions. *It was concluded that this applied to major subdivisions and did not apply in this instance inasmuch as it is a minor subdivision. Ms. Becker acknowledged that a note concerning this did not need to be added to the new map.*

On a motion made by Mr. Grant and seconded by Mr. Pilch the Board voted unanimously to accept the minutes of May 7, 2009 meeting as amended.

ADMINISTRATIVE

LETTER TO BUILDING INSPECTOR REGARDING CASCINO RESIDENCE: - Ms. Becker informed the Board that a letter went to the Building Inspectors informing them that the Certificate of Occupancy for the Salvatore Cascino residence is not to be issued until they prove that the installed or found septic system is operating properly.

LETTER TO KEVIN O'NEILL: – Ms. Becker informed the Board that a letter was written to Kevin O'Neill informing him that he would not be allowed on the agenda if he did not get information to us ten (10) days prior to the meeting.

LETTER TO SUPERVISOR CROWLEY: – Ms. Becker informed the Board that a letter was sent to Supervisor Reginald Crowley asking for the status of the nine thousand, eight hundred and fifty dollars (\$9,850.00) owed to the Town by Mr. Cascino according to Copake Zoning Law 23223A5 which is his requirement to pay the consultants not been collected at this time.

LETTER FROM RAPPORT & MEYERS: – Ms. Becker advised the Board that a letter was received from Rapport & Meyers saying that answer to the the Article 78, commenced by Cascino against the Copake Town Planning Board, will be given to the judge on September 4th.

ARTICLE BY DIANE VALDEN ABOUT HOUSING RESOURCES: – Ms. Becker wanted an article written by Diane Valden dated July 9, 2009 regarding Housing Resources entered into the record.

FINAL APPROVAL FOR THE ROE JAN COMMUNITY LIBRARY: – Ms. Becker informed the Board that the Roe Jan Community Library had final approval as they came forward with the Department of Transportation curb cut letter. She also noted that they had their final conversation with the Hillsdale Fire Chief and the decision was that sprinklers were not required according to the present building code but may be required in the future.

DEC LETTER CONCERNING SHAGBARK FARM FENCING OF 1,000 ACRES: – Ms. Pilch addressed the Board regarding the fact that several hundred acres, just outside the village, are being fenced off. Mr. Plich pointed out that much of the wildlife will be affected by this fencing and questioned whether several hundred acres could be fenced off without any type of documentation or permits. He pointed out that much of the wildlife will be fenced into this area as well as fenced out of this area. Ms. Becker believed they would claim they can proceed with this as they are agricultural and estimated that there are about one thousand (1,000) acres presently fenced off to wildlife. Mr. Pilch feels that as a Community and a Board they need to question this and make sure what they are doing is permitted. Ms. Becker informed the Board that she spoke with Nancy Heaslip of the DEC who said she will look into this. Ms. Becker also said that Ms. Heaslip asked for the Tax Maps and locations of all the areas being fenced so that she can evaluate the situation and any negative impact that it will have on the wildlife. Harvey Webber suggested contacting the Columbia County Environmental Committee as this is also an

environmental issue. Mr. Grant felt the Code Enforcement Officer of the Town should send a letter quoting Section 232-9F of the Code to see what their response is. Mr. Urban expressed concern that this might lead to notification of everyone having these fences. Mr. Brusie spoke of his own personal knowledge of fenced in property owners requesting nuisance hunting permits allowing them and others to hunt fenced wildlife.

NEW MOTOR VEHICLE STORAGE PERMIT REQUIREMENTS: – Ms. Becker informed the Board that the Supervisor set up a Commission to review the Motor Vehicle Permit Storage Procedure so that everyone is treated fairly and that the Commission came up with some recommendations. She noted that the Board is supposed to read these recommendations and respond to them. Ms. Becker advised the Board that any kind of change in the law would require County Planning Board review as well as SEQR review. Ms. Becker and Mr. Grant acknowledged the eight foot (8') fence requirement and noted that this is a Town Law. Ms. Becker questioned the five foot (5') set-back from the neighboring property and recommended the set-back coordinate with whatever zone the business is in. Mr. Urban clarified that this referred to the screening being five foot (5') from the property. It was noted that the existing requirements were that the required fencing be set-back fifty feet (50') from the Right-of-Way of any public highway and shall be set-back three hundred feet (300') from any dwelling or house or other place. It was clarified that the screening was for planting. Ms. Becker noted that there were no regulations as to how close the actual business could be to the neighbor's property and asked Harvey Webber, who is on the committee, whether this was a consideration. Mr. Webber acknowledged that this was a problem as many of the existing businesses are already in place and would be grandfathered in. Mr. Grant questioned the major changes from the existing provisions. Mr. Webber responded by saying that the amount of vehicles per acre as well as the amount of vehicles outside the fence was limited and any cars taken apart needed to be behind the fence. Mr. Grant noted that having a used vehicle repair shop requires special use permits from the ZBA and suggested that every time the permit needs to be renewed they should have to appear before the ZBA to make sure everything is on the up and up. He also suggested an appearance before the Planning Board for a Site Plan Review. Mr. Brusie questioned whether the laws presently on the book are being enforced and whether the new law being made will be enforced. Ms. Becker questioned that the draft is a Motor Vehicle Storage Permit change and not listed as a junk yard. Mr. Grant clarified that a junk yard is a separate issue. Ms. Becker decided that she would like to spend some more time on this and asked if the Board was all in agreement with the five foot (5') limit. The Board all agreed with this limitation.

CASCION ARTICLES: – Ms. Becker advised the Board that there were a few newspaper articles she wished to enter into the record regarding Salvatore Cascino dated July 14 and 15, 2009.

DIANA WILSON LETTER: – Ms. Becker presented the Board with a letter stating that she would like the June 4, 2009 minutes amended to read that she stated, "Housing Resources is not on the active agenda: I see no reason to recognize Mr. O'Neill this evening".

COMPREHENSIVE PLANNING BOARD MEETING: – Ms. Becker acknowledged that she had asked Jon Urban, Planning Board Treasurer, and Gray Davis, Planning Board Secretary, to attend the Comprehensive Planning Board meeting scheduled for August 20, 2009 which is a meeting for

all the elected and appointed officials in the Town as she will be out of town. Chris Grant, Planning Board Vice Chair, has been attending the Town Board Budget meetings.

ECONOMIC DEVELOPMENT: – Ms. Becker reminded the Board that Ken Flood, the Commissioner of Economic Development and Planning for the County, asked the Board to make a recommendation for something that everyone in Copake would want. It was concluded that the majority of people in the Town would like to have a General Store in Copake. Ms. Becker acknowledged that she wrote him a letter regarding this and gave him an inventory of abandoned and non-operating business in Copake which they also requested.

CARRY OVER

The following matters were carried over to the next meeting:

- 2009-5 BOUNDARY LINE ADJUSTMENT– JOHN HILLIARD – Deer Track Lane**
- 2007-11 MAJOR SUBDIVISION – FLS – Farm Road – Karen B. Cohen**
- 2008-07 SITE PLAN REVIEW - CATAMOUNT DEVELOPMENT CORP. –
State Route 23**
- 2008-23 MINOR SUBDIVISION/BLA – Lawrence Linder and Sandra Batpie –
Lakeview Road (Taconic Shores)**
- 2008-24 MINOR SUBDIVISION – Al Fair – Breezy Hill Road**
- 2008-21 MAJOR SUBDIVISION – Michael B. & Barbara S Braunstein – Off Golf
Course Road**
- 2008 – 25 SITE PALN REVIEW – Steve and Joan McMasters – Breezy Hill Road**

ADJOURNMENT

There being no further business, on a motion made by Mr. Grant and seconded by Mr. Urban the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 8:10 p.m.

Marcia Becker, Chair

Please note that all referenced attachments, comprising 19 pages, are on file with the Copake Town Clerk and in the Planning Board office. The referenced attachments are filed in the individual project files. An annotated listing follows:

ADMINISTRATION

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| | Mark & Lisa Neilsen Survey (1) |
| | Thomas Shepherd Survey (1) |
| | Jeffrey Weinstein Survey (2) |
| June 5, 2009 | Becker to Copake Building Inspectors (1) |
| June 5, 2009 | Becker to O'Neill (1) |
| June 30, 2009 | Becker to Crowley (1) |
| July 8, 2009 | Meyers to Nichols (1) |
| July 9, 2009 | Unpaid Bills? Don't Worry Article by Diane Valden (2) |
| July 14, 2009 | Becker to Lagonia/Shadic (1) |
| July 14, 2009 | Dover Landowner Sued For Alleged Pollution Article (1) |
| July 15, 2009 | State Sues Dover Dump Owner Article (2) |
| July 17, 2009 | Briggs to Lagonia (1) |
| July 17, 2009 | Lagonia to Becker (1) |
| July 18, 2009 | Becker to Baer (2) |
| | Motor Vehicle Storage Permit Changes Draft (1) |