

**Town of Copake
Zoning Board of Appeals
Minutes – June 26, 2008**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, June 26, 2008, at the Copake Town Office, 230 Mountain View Road, Copake, NY. Acting Chair, Leslie Wood called the meeting to order at 7:00 PM.

Introductions began the meeting; roll was called with the following ZBA Board members present: Leslie Wood, Shawn McClain, Frank Peteroy, and alternate Louis Kibler. Stanley Gansowski, and Jeff Nayer were absent.

An audience of approximately 8 was present, including Town Board Member, Bob Sacks, and Zoning Enforcement Officer, Ed Ferratto.

Minutes:

Leslie made a motion to approve the minutes of May 22, 2008, this was seconded by Frank. The motion carried, with 3 yeas, and 1 abstain.

Discussion:

Conforming and non-conforming lots, what is the definition, for the purposes of the ZBA and Town Zoning. When the current zoning laws went into affect, lots that had been sub-divided in the 50's and 60's, that were properly filed with the County Clerk prior to 1972, were termed non-conforming lots. They are grandfathered, non-conforming, but permissible when zoning was passed into law. There is some disagreement as to how to interpret this. Non-conforming prior to zoning, does it mean it is conforming now, or does it mean it is still non-conforming?

Former Board Member, Mac Simms, had made a case for an interpretation, but this has not as of yet become law. Frank Peteroy, presented the Board with a written memo, which he read.

Up to the fifteenth century, the world was conceived as flat. It was the period of the Dark Ages. In 1492, & arguably before, it was discovered to be round, a sphere, a global texture of unevenness.

As property ownership evolved, state oversight to insure equitable rights, Fairness, & a tax base developed into a system land registry, zoning & codes – the language being in the definitions.

Building Heights

In order for all property owners to be treated fairly, the State established a GRADE PLANE representing the average of finished ground level adjoining the building on the exterior walls...etc. It defined a building height as the vertical distance from grade plane to the average height of the highest roof surface.

The Town on the other hand, (by Definition 232-3), set the height as the Vertical distance from the average of the finished grade along the wall of A building to the highest point.

(232 att 3:1 note 2 for non-conforming lots sets the height from the lowest point of the existing grade. 10-15-06)

THE definition is part of the Building Code of New York State, approved by the International Code Council & the Department of State of New York, The contributors were the State Fire Prevention & Building Code Council, (31); Department of State (6); Building Code Technical Subcommittee (21); Administrative Task Group (5). Exh 1

What we have is about 100, combined, accredited professionals that have Agreed to the simple formula to determine the height of a building – in any Topographic configuration.

It is unnecessary for the Town of Copake to reinvent the wheel!!!

This definition recognizes the disparity of topography & properties, & That the equitable & fair rule to each owner is to average it out. Not To do so could constitute spot zoning & selective discrimination. Caution, that we don't place a low profile property at a severe penalty in an uneven neighborhood. This is not the intent of the law, clearly. Moreover, cross referencing by 'exception' is an absolute necessity when Dealing with permitted rights. Note 2 is a conflict.

Zoning Lots & Exemptions

The legal procedure to maintain the property rights of pre-existing lots Subdivided & properly registered prior to adoption of zoning & planning

Boards, in this case 1972, was to exempt the property.

Sec. 232-24(2),(a,b,c) & (5) (a), states that the lot is conforming provided it Meets certain conditions.

These protocols maintain the parity of properties that are now placed in a zone created by the town to guide its future.

The rule is that all properties in a specific zone are equal provided that certain conditions are met.

It goes to the heart of our Constitution for the quiet enjoyment of property Ownership, & equality under the law.

New York Zoning Law and Practice, 3rd ed., R.M. Anderson – quote:

Zoning regulation are required to be uniform “for each class of buildings throughout the district.” EXH2

We should also note that town zoning regulations must be enacted in Accordance with a comprehensive plan, and must be uniform within each district. The Copake Comprehensive Plan is dated 1972.

To suddenly take a lot that is less than the zone it is in, say 12K in a 30K zone, & apply a different set of rules would be illegal & very inappropriate if it meets the test of conformance.

The original code writers, guided by New York State’s Municipal Laws, clearly recognized individual property rights.

Reference: New York Zoning 2.11

Residential Code of New York State, Acknowledgements

He concluded that the Comprehensive Plan super-cedes zoning.

The discussion continued with Leslie making the point that “ we have to go by the current Code of Copake Zoning, dated 3/2008. We cannot change the book to interpretation. We could take up this issue and bring in legal council to make recommendations for change to the Town Board for vote. Frank continued, stating that the entire book is in jeopardy, written by an ad hoc committee, not by a Comprehensive Plan. Bob sacks interjected by stating that it is his recommendation that the ZBA Board seek legal council on this issue. He continued by stating that Zoning Law and Town Code need to have consistency of situations and that judgments need to be fair all aboard. If a case were to be before a judge, the judge would go to the Comprehensive Plan, which super-ceded zoning. It was mutually agreed, that this discussion would continue further, with legal council present.

Public Hearings:

A motion was made by Leslie, and seconded by Shawn, to open the public hearing. Motion carried, unanimously.

Application: 2008-06, Flanigan Corp, 141 Golf Course Road, Copake Lake, Area Variance to replace existing house, to exceed height limit: Both Mr. And Mrs. Schultz, applicants and officers of Flanigan Corp. were present and came forward to answer questions. It was determined that all abutters had been duly notified of said public hearing. The applicants were asked to clarify, it appeared there were two issues, one was to tear down the old house and, two was its replacement, the height of the second floor. Lou asked if the height came from the base of the lowest point, or from the level ground point. Mrs. Schultz passed out a slope diagram of the property at this time.

Again, the Board struggled with the issue of conforming, non-conforming lots, and how the determination should be made for the height measurement of the new building. Leslie remarked that she had visited the property, and that in her view, the new building would not be to tall for neighborhood. Frank asked about the side yard, Mrs. Schultz replied that the neighbor boundary is 80 feet away. Lou asked the applicants as to what the hardship would be. To which the Schultz' replied that there were 3 issues: 1. The assessment for homes on that road would be high, it was not cost effective to repair the present dwelling. 2. It will be their full-time home. There is limited space, they have no garage and will need storage area. 3. The basement would be for storage, not living area. Leslie asked why they couldn't stay within the 25' grade, the applicants responded that the replacement home was manufactured, and that their options were limited to what was available.

Leslie then asked the audience if anyone wished to speak for or against. Mr. Juan Grote asked to speak, "I'm a neighbor, the improvements proposed by The Schultz' will improve the neighborhood. I am not against this." Linda Chernewsky of Morris Associates also asked to comment, reminding the Board that she had worked on a project on

that road earlier, which involved the height restriction and that the application for area variance had been approved. Having no further comments or questions, the Board was ready to proceed.

Frank made a motion to approve the application, and to close the public hearing, this was seconded by Shawn. The motion carried, unanimously.

Leslie made a motion to open the public hearing, this was seconded by Shawn. The motion carried, unanimously.

Application: 2008-07, Juan Kreutz and Catrin Grote, 137 Golf Course Rd, Copake Lake, Area Variance height restriction for addition of second floor: Linda Chernewsky of Morris Associates, as well as the applicants were present to answer any questions.

The files were reviewed, it was determined that public notice was proper and all abutters had been notified. Lou asked for clarification of what the height variance was. Ms. Chernewsky responded that the proposed height would be 32 ¼'. She further explained the blueprints and plans. Shawn asked about the original permit for the deck, Mr. Kreutz said all had been in order when they purchased the house. Leslie questioned location of proposed mudroom, and asked how the height of the roof had been measured. Ms. Chernewsky responded with the lowest ground grade and the highest point of the roof, 30' off grade. It was determined that this house was to be higher because it was more out of the ground. Lou asked the distance between your house and the Schultz. About 70 feet, 35' on each side of houses to boundary line. It was questioned as to whether a side yard variance was also needed.

Leslie asked the applicant to respond to what the hardship was here. He did so by stating that 1. a build-ability issue, placement of stairs to the second floor requirements by NYS building code for headroom. 2. Need to expand for a larger family. The discussion continued regarding the septic issue, need determined by the number of bedrooms. Goldman letter (5/6/08) again reviewed, it was determined that this was not an issue.

Frank made a motion to approve the application, this was seconded by Shawn. The motion carried unanimously.

Shawn made a motion to close the public hearing, this was seconded by Frank. The motion carried, unanimously.

New Business:

New Appeals:

Application: 2008-08, Douglas & Harriett Ziegler, 38 SW Colony Rd, Copake Lake, Area Variance, addition of mudroom, build a garage. Ms. Jaclyn Tyler, from JT Drafting & Design was present to answer questions as well as both Mr. & Mrs. Ziegler.

The plans and application were reviewed, it was determined the zone was R-2. Ms. Tyler explained the plan; a sealed mudroom & dining area would be added, as well as squaring off the backside of the house, and adding a back deck.

Frank asked the acreage. Mr. Ziegler explained that there was an application before the Town Planning Board to combine both lots. They were scheduled for the next meeting. Frank informed the applicant, that prior approval from the Planning Board was needed before ZBA approval could be considered. He further asked when sub-divisions had been filed. Mr. Ziegler replied that the original survey had been in the 1960's. The house was pre-existing, 2 bedroom, the foundation exists, they will be adding to it, however to create the utility room/storage area in the basement. Currently, there is only a wood stove, a heating system would be added. No new bedrooms will be created.

The septic system, 1,000-gallon poly tank with poly leaching pit, a new system with scheduled maintenance.

The 2-car garage would be added. Frank asked if they would be able to meet grade to get to the garage. The answer, yes. Leslie asked attendee, Ed Ferrato, Zoning Enforcement Officer what the requirements would be for side and rear. Ed responded that 8 feet would be required for the side yard and 25 feet for the rear and front in R-2. There was question as to whether the rear lot would be non-conforming, approval would be required (232-24-5). Frank asked if the garage could be shortened to meet the 10 ft. Mr. Ziegler said yes. Frank then asked about the plan for the garage, he pointed out that gutters might be needed to keep the water shed away from the leaching pit. Mr. Ziegler again said this could be addressed. Frank also informed him that the roof beam and edge would be over the leaching pit and that the supporting column would have to be moved and the

roof enlarged so that the roof runoff (rain) would not fall directly on the pit.

Lou said that the side yard footage issue was not clear. Bob Sacks again reinforced the contention that legal council was necessary to make a definitive, clear definition of a non-conforming lot.

Shawn made a motion to accept the application, and schedule a public hearing, pending Planning Board approval. This was seconded by Frank. The motion carried, unanimously.

Discussion continued regarding lot size, non-conforming, conforming, etc. Bob Sacks suggested to the Board that Lawrence Howard, esq be invited for legal council and Planning Board Chair also be asked to attend next meeting prior to any public hearing to address the issue. What is the intent and meaning of Non-Conforming Lot, Building, and Uses. The issue also needs to be brought up to the Comprehensive Planning Board.

Correspondence:

None

Old Business:

None

Adjournment:

Frank made a motion to adjourn the meeting, this was seconded by Shawn. The motion carried, unanimously. The meeting was adjourned at 9:30 PM.

Respectfully Submitted,

Theresa A Traver
Recording Secretary

Copy to file: Peteroy Memo, 6/25/08