



# **COPAKE PLANNING BOARD**

**DECEMBER 3, 2009**

## **MINUTES**

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### **DRAFT**

**Please note that all referenced attachments, comprising 18 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.**

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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**

#### **1. HEIGHT AND SIDE YARD SET-BACK VARIANCE – SHARON AND JED LUCHOW – Grant Drive and County Route 7**

Ms. Becker informed the Board that Sharon and Jed Luchow were seeking a Height Variance as well as a Side Yard Set-Back Variance and according to Town Code 232-24, the Board needs to proceed with a Site Plan Review. Mr. Grant clarified that the Luchows are building on top of an existing footprint which is not being expanded and the variance requested is for a two foot eight inch (2' 8") height variance. Mr. Grant pointed out that this concerned the Zoning Board and the Planning Board.

Ms. Becker acknowledged a letter received from the Zoning Board questioning whether the Planning Board needed to address the screened-in porch and whether a variance was needed. Ms. Becker quoted Town Code 232-8d2 which stated that any open or enclosed porch shall be considered a part of the building. Mr. Grant clarified that inasmuch as the porch already existed, it would be considered grandfathered whether it meets the set-back or not, enclosed or not.

During the review of the check list a question ensued regarding the septic tank and leech fields, a proposed water line, a well to the property and portable water. Mr. Grant pointed out that by enclosing the deck and adding a second story the density on a lot would be increased on a subdivision that is already a very dense and could put increased strain on the local resources.

Mr. Grant believed that a Height Variance should be a decision, made by the Zoning Board. Mr. Urban believed that a two foot eight inch (2'8") variance shouldn't be an issue if it wasn't any higher than any contiguous building. Mr. Grant acknowledged that the Planning Boards purpose was to interpret the law and not give an opinion or advice on special circumstances.

The Board decision was that they would write a letter to the Zoning Board stating that more and more people are asking for variances and all attempts should be made to build within the confines of the existing law as referenced in the Town Code.

## **PUBLIC HEARING**

### **2009-9 MINOR SUBDIVISION – CARL CAMPBELL & KRISTA PROPER – Bloody Hill Road**

On a motion made by Mr. Brusie and seconded by Mr. Filipovits the Board voted unanimously to wave the reading of the Public Hearing. On a motion made by Mr. Grant and seconded by Mr. Pilch the Board voted unanimously to open the Public Hearing. Ms. Becker advised the Board that the Public Hearing is open but noted that the applicant was not present due to the fact that there was a delay in the completion of their map. Ms. Becker addressed the fact that the Public Hearing would remain open and tabled the item until next month's meeting.

### **2009-10 MINOR SUBDIVISION – GLORIA LYONS – County Route 7**

On a motion made by Mr. Filipovits and seconded by Mr. Pilch the Board voted unanimously to wave the reading of the Public Hearing. On a motion made by Mr. Brusie and seconded by Mr. Filipovits the Board voted unanimously to open the Public Hearing. Ms. Becker asked if anyone wished to speak on this application. Being none, on a motion made by Mr. Grant and seconded by Mr. Pilch the Board voted unanimously to close the Public Hearing.

## **SUBDIVISION/SITE PLAN**

### **2009-10 MINOR SUBDIVISION – GLORIA LYONS – County Route 7**

Gloria Lyons appeared before the Board with her neighbor Jay Hoag regarding the property she wished to sell to him. Ms. Becker reminded the Board that Ms. Lyon's property is divided between Zones "R-2" and "R" and the question remained as to how they could remedy the subdivision of this property within the law.

Mr. Hoag questioned whether it would be possible for him to purchase another half of an acre from Ms. Lyons in order to create a six (6) acre parcel and grant him access to another parcel he owns. Mr. Grant questioned the size of Ms. Lyon's remaining parcel. Ms. Becker advised him that Ms. Lyon's parcel would comply with the zoning in the "R-2" zone.

Mr. Hoag ensured the Board that the surveyor, Mr. Hunnell would re-do the map to the Board's satisfaction if the process complies with the Town Code. Mr. Grant clarified that this process would be a Boundary Line Adjustment on Mr. Hoag's property creating two (2) conforming lots. Ms. Becker noted that the Board's concern of creating a non-conforming lot becomes non-existent with this solution as the properties in each zone would comply with the Town Zoning.

The Board was in agreement with this. Ms. Becker informed Mr. Hoag that he needed to present a revised map and the process would be completed when it was received.

### **2009-13      SITE PLAN REVIEW – MARIA ZADRIMA – Golf Course Road**

Architect Lucio DiLeo appeared before the Board representing Maria Zadrime. Mr. DiLeo advised the Board that Ms. Zadrime wished to demolish the existing house and build another one in its place. Ms. Becker noted the zoning is in the “R-2” district. Mr. DiLeo explained that the lot is nineteen thousand six hundred (19,600) square feet.

Ms. Becker pointed out that the lot is a non-conforming lot. Mr. DiLeo advised the Board that the set-back on one side of the house does not meet the required set-back. He noted that there is an existing sewer easement in the back [lakeside] that does not allow them to go further back and pointed out that the new house would be in the same area as the present house. Ms. Becker questioned whether the existing house is one story. Mr. DiLeo advised her that the existing house is a one-story house with a walk-out basement and the new house would be a two-story house plus the walk-out basement.

Ms. Becker questioned the depth of the house from the lake. Mr. DiLeo advised her that the rear yard from the lake requires seventy five (75’) and the existing house is forty feet (40’) from the lake. He proceeded to advise that the proposed house would be thirty four point sixty eight feet (34.68’) from the lake. Ms. Becker advised Mr. DiLeo that the Town zoning prohibits any development closer than one hundred feet (100’) from the lake. Mr. Grant advised that regardless of the existing footprint, the new structure cannot be moved closer to the lake. Ms. Becker questioned the reason for the increased set-back. Mr. DiLeo explained that this concerned the deck only and acknowledged that this is a starting point for him as he was not familiar with the Town restrictions.

Mr. Grant advised Mr. DiLeo that if you are on a non-conforming lot, you can build on the existing footprint and going closer to the lake was not allowed. Mr. Grant also pointed out that the height restriction on a non-conforming lot is twenty-five feet (25’). Mr. Urban clarified that the deck shouldn’t matter to which Mr. Grant agreed as long as it is not enclosed.

Ms. Becker quoted the Town Code regarding the height restrictions and advised Mr. DiLeo that the maximum building height of structures on non-conforming lots should be measured from the existing grade of its lowest point. Mr. Grant advised that what the Board wishes to avoid is a big, huge house close to the lake on a small lot. Ms. Becker clarified that it is the lowest grade existing and average grade is for a conforming lot.

Ms. Becker acknowledged that there are some issues concerning this application and noted that the deck was permitted. Mr. DiLeo pointed out that one of the neighbors had a similar house to the one he was proposing and Mr. Grant acknowledged that things done in the past did not always conform to present regulations. Ms. Becker pointed out that the basement creates another story creating a three-story building. Mr. Grant suggested that Mr. DiLeo review the Town Code density regulation of a non-conforming lot which gives a separate height regulation before moving forward with this application.

**2009-14      BLA/MINOR SUBDIVISION – KAREN S. SMITH & MAARTEN DEKADT – Rt. 7A**

Surveyor, James Tomaso appeared before the Board representing Karen S. Smith and Maarten deKadt and explained that earlier this year he did a survey for the applicants. Mr. Tomaso went on to explain that the survey showed that Ms. Smith and Mr. deKadt's shed was over the boundary line on William and Susan Flynn's property. Mr. Tomaso advised the Board that a meeting took place between the applicants and their neighbors. It was agreed by all that the boundary line would be adjusted by moving the boundary around the shed so that the shed and some of Ms. Smith and Mr. deKadt's landscaping would now be on the applicant's property. In return it was agreed that an equal acreage swap would be given to the Flynn's. Mr. Tomaso pointed out that neither the applicant nor the neighbor's property would change in size.

Ms. Becker asked whether there were any covenants or deeds, rights of way or easements and was advised that there were none. Ms. Becker reviewed the map to ensure that everything was accounted for. Ms. Becker advised that a Public Hearing was needed as well as a SEQR. On a motion made by Mr. Pilch and seconded by Mr. Filipovits the Board voted to classify the sketch of Karen S. Smith and Maarten deKadt and William Flynn and Susan Flynn as a Minor Subdivision/Boundary Line Adjustment from a survey by James Tomaso map dated October 14, 2009 and accept it as a Preliminary Sketch and schedule a Public Hearing for next month's meeting.

Mr. Tomaso informed the Board that he might have another Public Hearing in Austerlitz the night of the next Board meeting. He was advised that a letter from all the abutting neighbors would be sufficient instead of a public hearing.

## **MINUTES**

Ms. Becker asked for a motion to approve the minutes of the November 5, 2009 meeting. There being no changes, on a motion made by Mr. Filipovits and seconded by Mr. Brusie the Board voted unanimously to accept the minutes of the November 5, 2009 meeting.

## **ADMINISTRATIVE**

**PROPOSED OUTDOOR WOOD BOILER LAW DRAFTED BY LAWRENCE HOWARD:** - Ms. Becker asked the Board if they had any thoughts on the law drafted by Attorney Howard. Mr. Pilch felt there were some black spaces regarding the size, set-backs and screening of lots. Mr. Pilch suggested restricting them by zone on parcels that are two (2) acres or more. Ms. Becker noted that the set-backs would still have to be met. Mr. Grant believed that the issue was more directed at the smoke and the density. The Board felt these should be restricted to the "R" zone with three (3) acre zoning. Mr. Filipovits questioned the restriction on limitation of use and how it would be enforced. Mr. Urban believed there shouldn't be a restriction on when the boilers are used or not used. Ms. Becker asked if the Board had any suggestions on fees. None were brought up. Linda Gabaccia brought up the issue of special use permits. Ms. Becker believed this to be somewhat confusing and questioned who would issue permits and whether it would be the Building

Inspector or the Zoning Enforcement Officer as this is her biggest concern. Ms. Becker believed that the issues of enforcement needed to be stipulated as to who would do what. Frank Peteroy, from the audience, reminded the Planning Board that Permits can only be issued by the Building Inspectors. Ms. Becker also pointed out the issue of inspection and who would be responsible for overseeing this. She felt this should be dealt with by a professional. Mr. Urban felt that inspection was something that should not be required as it would be the same as requiring someone to have their chimney cleaned. Mr. Brusie agreed with this and felt that restrictions on chimneys could be the next thing to be restricted. Inasmuch as a chimney is higher than a wood boiler Mr. Urban felt this wouldn't fall into the same category. It was pointed out that there were also restrictions on chimneys in the Town Code. Ms. Gabaccia questioned whether the Board felt there should be some screening and restrictions to the height of the chimney. Ms. Becker brought up the fact that studies have shown these boilers to produce hazardous materials. Mr. Brusie pointed out the fact that the more restrictions put on the wood boilers, the more financial burden would be put on the same people who are trying to save money on heating their homes. Ms. Becker noted that these issues could be intertwined in what is presented to the Town Board. Ms. Gabaccia's belief was that the issue came about due to the fact that wood boilers were banned in Taconic Shores. She pointed out that her intent was for input from the Planning Board to be presented to the Town Board. Mr. Grant suggested keeping it as simple as possible and restricting it to certain districts as long as it meets EPA standards.

**MOTOR VEHICLE STORAGE UPDATE:** – Ms. Becker reminded the Board that recommendations had been made by the Planning Board as well as the Zoning Board of Appeals and Zoning Enforcement Officer regarding Motor Vehicle Storage. She advised the Board that the Town Board ignored these recommendations and passed a law at the end of the last Budget Meeting on November 12, 2009 saying that five (5) junk cars and registered cars per lot can be in the business district. She also pointed out that under the Town Board decision any Motor Vehicle Storage area could have sixty (60) vehicles behind the fence, fifty (50) per acre up to two hundred (200) per business. She pointed out that none of these need to be licensed. Ms. Becker believed this to be an irresponsible act of Government and asked if the Board wished to do anything about this. Ms. Gabaccia informed the Board that the original task force recommendation was written up incorrectly, tabled, revised and then voted on. Ms. Becker suggested writing a letter stating that it was reviewed by the Board and recommendations were made which were ignored. Ms. Gabaccia agreed with this. Ms. Becker informed the Board that she had discussed this with Attorney Howard who advised that there were conflicts in the zoning that needed to be straightened out. Mr. Brusie questioned whether this was the responsibility of the Comprehensive Planning Board. Ms. Becker believed this would be the case eventually and pointed out that the permits have to be issued every year and they would be issued according to this law. It was agreed that a letter would be written to the Town Board expressing disappointment in the fact that recommendations were ignored and items were added without the Board's knowledge. It was the Planning Board's opinion that the enactment of Local Law 3 was negligent.

**PLANNING BOARD VACANCIES:** – Ms. Becker advised the Board that there is a Planning Board vacancy to which two applications have been received. She acknowledged an application received by Planning Board member Chris Grant who expressed his wish to continue on the Board and an application from Charles Schultz who does not presently reside in Copake. A discussion ensued as to where an applicant resides and where an applicant votes. Ms. Becker

advised the Board that the applicant needs to be interviewed inasmuch as he applied for the position and asked for eligibility of the Board members. Mr. Brusie said he would be available next Tuesday, December 8<sup>th</sup> and so would Mr. Pilch. A meeting was set up for Tuesday at 6 pm to interview Mr. Schultz. Ms. Becker also asked the Board if they were in favor of Lisa DeConti continuing as Planning Board Secretary. The Board was in agreement for her to remain in her position.

**SHAGBARK FARMS:** – Ms. Becker advised the Board that Shagbark Farms intends on doubling their land ownership and fencing of property in Copake. Mr. Filipovits questioned whether their properties were leased or owned. Ms. Becker clarified that some of the properties were owned and some were leased. Ms. Becker believed this to be a big issue if another one thousand (1,000) acres becomes fenced off in Copake and questioned what the effect on the habitats would be. Mr. Urban suggested meeting with them and proposed the use of corridors within the fenced off areas.

**BRAUNSTEIN UPDATE:** – Ms. Becker informed the Board that the Braunsteins are in the process of reviewing DEC comments regarding permits for their projects. They have also revised sketches as well as subdivision roads and common driveways.

**CONSERVATION RESOURCES COMMITTEE MEMBERS:** – Ms. Becker advised the Board that the Conservation Resources Committee needs members. She noted that the committee is supposed to look at all the resources in the Town and catalog them.

**CHARLES BARROWS:** – Ms. Becker informed the Board that Town Engineer, Charlie Barrows had passed away and that she wrote to Reggie Crowley suggesting a donation to the American Heart Association in his honor.

**SALVATORE CASCINO:** – Ms. Becker advised the Board that there has been no action taken by the Town Board to collect the fees owned the Town by Salvatore Cascino. Ms. Gabaccia advised that this had been passed on to the Town Attorney with no results.

**ATTORNEY & ENGINEER:** – Ms. Becker asked the Board for their opinion to re-engage Attorney Howard and Engineer Doug Clark for another year. The Board was all in agreement regarding this.

**PROPER PAPER WORK FOR CITIZENS :** – Ms. Becker advised the board that the Homeland Security Act requires that all employers verify all their newly hired personal are either citizens or posses the proper paper work to be employed in the United States.

## **CARRY OVER**

The following matters were carried over to the next meeting:

- 2009-9        MINOR SUBDIVISION – CARL CAMPBELL & KRISTA PROPER –  
Bloody Hill Road**
- 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. Brusie and seconded by Mr. Pilch the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 8:15 p.m.

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Marcia Becker, Chair

**Please note that all referenced attachments, comprising 18 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

November 9, 2009	Donald Shadic to Zoning Board of Appeals (1)
November 6, 2009	Zoning Board of Appeals to Sharon and Jed Luchow (1)
November 7, 2009	Zoning Board of Appeals to Sharon and Jed Luchow (1)
November 24, 2009	Jeff Nayer to Marcia Becker (1)
November, 2009	Lawrence Howard to Copake Planning Board (7)
September 28, 2009	Local Law No. 3 of the Year 2009 (2)
November 9, 2009	Harvey Weber, Joe LaPorts, Chris Quinby and Marcia Becker to Town of Copake (2)
October 22, 2009	Jack Schults to Reginald Crowley (3)