

**Town of Copake
Zoning Board of Appeals
Minutes- April 22, 2010**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, April 22, 2010, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman, Jeff Nayer at 7:00 PM.

Present at this meeting were: Jeff Nayer, Frank Peteroy, Leslie Wood ,Hilarie Thomas, and Alternate, Dustin Bessette. An audience of about 6 were present, including Town Board Member Bob Sacks, and Planning Board Chair Marcia Becker.

Minutes:

The minutes of March 25, 2010 were reviewed. Frank asked that the approval of these minutes be suspended until the May meeting, in order for him to review the audio tape. There were no objections from the remaining Board Members, Jeff abstained from this decision as he was absent from the March meeting. The minutes were not approved.

Correspondence:

The following correspondence was read;

1. Copake Planning Board to Chernewsky; 4/7/10.
2. Copake Planning Board to Ferratto; 4/17/10.
3. Copake Planning Board to Knox; 4/21/10.
4. Copake Planning Board to Spampinato; 4/15/10.
5. Tal G. Rappleyea to Copake Town Board; 3/13/10.

Public Hearings:

Application 2010-01, David Levine, 156 Julianna Drive, Copake Lake, Area Variance, Pool in front yard.

The Public Hearing had remained opened from the March meeting, and Mr. Johnson, representing the Levine family was called forward. Jeff asked if anyone wished to speak further on the issue, no one came forward.

Mr. Johnson was again asked the size of the proposed pool. It would be 20' X 40'; to be placed to the right of the front porch. Discussion as to whether it could be moved without cutting mature trees, conclusion no it could not.

Leslie referred to 232-9.D, *Accessory uses, residential districts...* and to 232-3, *Definitions; Yard, Front, A yard extending across the full width of the lot and lying between the front lot line of the lot and the nearest point of the principal building.*

Frank read from an attached memo dated April 22, 2010:

RE: Application for construction of a in ground swimming pool in the front yard of the property located @ 156 Juliana Dr., Copake, NY.

House is set approx 228 to 258 feet back from Juliana Drive at an elevation of approx. 75 to 100 feet above the said roadway, on 3.2 ac. The rear yard is approx 76 ft in depth, side yard south 90 to 118ft; side yard north approx 260. No pins found site visit 21 Apr'10. The main axis of the house is set approx. 45 -50 deg from north.

The level of the front lawn cannot be seen from Juliana Drive due to the steepness of the slope & setback distance to the house.

The present zoning & the original 1972 zoning does/did not permit swimming pools in the front yard. In 1972, most lots were on reasonably level grades, easy, simple, development, Taconic Shores as an example. The development of hillside lots arrived about 15 years ago, as the easy, level stock of properties became less available.

To the question of WHY a swimming pool or tennis court cannot be in the front yard, I have heard none. For myself, I can only find two reasons. 1. It is in the zoning from 1972;& 2. It was probably there because both activities can be a distraction to motorists passing by when homes were level with the roadways.

It is now 38 years later, & there are a significant number of hillside homes, with different needs & unique site conditions.

The dogmatic application of a rule created at a time when it made some sense, should not prevent this Board of the year 2010 from granting relief to the applicant for the following reasons:

- 1. The in ground pool cannot be seen from the road because of its elevation & distance from the road, so distraction for motorists is not an issue. These conditions are unique to the site.*
- 2. The septic system is located in the rear yard.*

- 3. The south corner of the lot would cause the pool to be in shade or partial shade 100% of the time - even with a minimum amount of trees removed, which is not sensible. There exists tall stands of birch, cherry, etc, which, if removed would impact the visual canopy & reduce the property value.*
- 4. The north section has several healthy, old growth oaks, (20 - 30 inches or so in diameter), ash (in remarkably good conditions), birch, etc., which would seriously impact the presence & elegance of the site.*
- 5. The trees are clearly asses to the Town & the owner. Very limited trees were removed in order to place the house, (to the credit of the developer), & what remains should remain. Preserving the tree canopy, as is preserving farming & open space, is imperative in the long term planning.*

I would recommend strongly to approve this variance, with the condition that only the pump & heater be permitted nearby, & that of course, it must have a fence according to the Building Code.

Thank you,

Frank E Peteroy

Leslie made a motion to close the Public Hearing, this was seconded by Hilarie. The motion carried, unanimously.

There was some concurrence that this pool would be located far from the road, out of sight and noise not an issue. Also, expressed was the desire not to cut the trees if possible. Discussion continued as to whether if the pool were moved would a variance be needed. It was agreed that no he would not need a variance if the applicant kept the pool behind the line of road to nearest point of house (23-29.D) but trees would need to be removed. Mr. Johnson was asked if they wanted to proceed with the variance or move the pool. Mr. Johnson replied that the applicant wished to proceed with the variance and not have to cut the trees if possible.

Jeff led the Board Members through the questions of permitted actions for an Area Variance. In making its determination, The Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Answer: NO

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue other than an area variance.

Answer: YES, but trees would need to be removed which would be a detriment to the character of the neighborhood.

3. Whether the requested are variance is substantial.

Answer: NO

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Answer: There would be a benefit of 30,000 to 40,000 gal of water which could be used for fire fighting.

5. Whether the alleged difficulty was self created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

Answer: Yes

The variance was reviewed for a 20' X 40' pool in the front yard, right of the porch, and fenced in accordance to law. The pump and heater would be screened and placed not forward of the pool, from the road. The roll call for the vote was as follows:

Jeff: Abstained	Leslie: yes
Dustin: yes	Frank: yes
Hilarie: yes	

This variance was approved, the Action Taken form would be completed, signed and sent to the applicant and Building Inspector.

New Business:

New Applications:

Application # 2010-03, Lloyd Pasach, 502 Center Hill Rd, Copake, Area Variance, Lake setback to build a garage.

Frank recused himself.

Mr. Pasach was called forward to review his application and answer questions. It was determined that this property was a conforming lot in the R-2 zone. Mr. Pasach informed the Board that he is in the process of joining the two lots, and that there was to be no septic/water in the garage. Leslie informed that by joining the two lots the requirement for setback distance would change. He would need a front yard variance as well.

The building plans reviewed, the property conforms, but the proposed building would be non-conforming. A garage cannot be build in front of the house unless it is attached to the house. Mr. Pasach showed the Board members a proposed drawing of a plan to connect

the garage to the house, they were going to add that part later for financial reasons, but agreed that the garage would be attached to the house sooner than later. The proposed garage would be 19'6" tall, with a cement floor. The Board asked Mr. Pasach to stake out the site for the proposed garage for an on sight visit, he agreed. When asked if he had obtained a permit from DEC regarding building within 100' from the lake, he provided a copy of the permit.

Hilarie asked about the proposed new driveway, had he obtained approval for this, since the new driveway would be closer to brown's dam, with the upcoming construction and the potential for the speed to increase after completion of the new bridge. Concern was raised as to whether this would be a dangerous situation. Mr. Pasach did get approval from the County Highway Dept, but this was questioned as to whether they had authority to grant approval. The Board decided to submit this application to the County Planning Board for review in addition to the Copake Planning Board

Leslie made a motion to accept this application, this was seconded by Hilarie. The motion carried, unanimously.

Mr. Pasach was informed that public hearing would be set for the May meeting, however he would need to provide proof of the lots being merged and stamped plans showing the connection of the house to the garage.

Application # 2010-01, Gary Beck, (AKA Ameristop), 1817 Rt 23, Craryville, Area Variance, gas pump installation.

Marcia Becker, Copake Planning Chair was asked to sit with the Zoning Board in reviewing this application, since it would need to go before the Planning Board for site Plan Review. This was done only to assist the applicant, as to what would be required documentation that the Planning Board would need and what documentation the Zoning Board would need.

It was decided that Mr. Beck would need to provide the following:

1. spec sheet for the proposed above ground tanks.
2. CO from Building Inspector for pizza parlor.
3. Plans for the parking lot, since the spaces will be reduced with the placement of the pumps and in particular handicapped parking needs to be marked.

Other issues to be considered would be lighting, hours of operation, screening of tanks, lot coverage, well, septic, pump chamber, etc..

The Board members also agreed that this would need to go before the County Planning Board for review, NY State, Rt 23 to review the current curb cuts, and DEC would need to approve a monitoring system for the gas pumps, especially because of the stream.

Jeff informed Mr. Beck that the adjoining property owners would need to be notified of the upcoming Public Hearing. Our granting a variance would be contingent on approval from the Town Planning Board in addition to the County, State, and DEC.

Since this application was not yet ready for acceptance, No Public Hearing was set at this time.

Training:

Jeff reminded new Board member that training was required, but none has been scheduled as of yet. He informed the group that new Town Attorney Rappleyea had mentioned that he could and is agreeable to provide training to the Board Members. All were receptive of this idea, Jeff will investigate further.

Article 78:

Discussion ensued as an update to this case. Jeff and Hilarie will meet with attorney 4/23/10. The scheduled hearing is set for 4/30/10. After review of the document, it was concluded that there were many discrepancies, of which Hilarie and Jeff made note and will point out to our attorney, specifically, The Town of Ghent Stamp, no plans for a house were ever submitted, applicant did know of easements, zoning law was not changed after the applicants bought their property, document was not written by the attorney that represented application to the Board. Concern was expressed that case places ZBA on the defensive and legal fees are expensive to the Town.

Old Business:

By-Laws Changes: were approved by the Town Board.

Application Check List: tabled

Frank made a motion to adjourn this meeting, this was seconded by Hilarie . The motion carried. The meeting adjourned at 9:45 PM.

The next meeting will be held on Thursday, May 27, 2010, at 7:00 PM.

Respectfully Submitted,

**Theresa A Traver
Recording Secretary**