

**TOWN OF SKANEATELES  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
June 2, 2020**

**Present:**

Denise Rhoads  
Jim Condon  
David Palen  
Kris Kiefer  
Michael Ciaccio  
Scott Molnar, Attorney  
Karen Barkdull, P&Z Clerk  
Kim Benda, ZBA Clerk

The meeting commenced at 7:00 p.m. at Town Hall. The next Zoning Board of Appeals meeting will be held on July 7, 2020 at 7:00 p.m. Previous distribution to the Board of the regular meeting minutes of May 5, 2020 was executed and all members present acknowledged receipt of those minutes.

**WHEREFORE**, a motion was made by Vice Chair Condon and seconded by Member Palen to accept the May 5, 2020 minutes as submitted. The Board having been polled resulted in unanimous affirmation of said motion.

**Record of Vote**

Chair Denise Rhoads	Present [Yes]
Vice Chair Jim Condon	Present [Yes]
Member David Palen	Present [Yes]
Member Kris Kiefer	Present [Yes]
Member Michael Ciaccio	Present [Yes]

Member hours for the present Board members were requested and submitted for the month of May 2020 via email.

**Continuation - Public Hearing**

Applicant: Bruce & Patricia Texeira  
2141 Terrace Ln  
Skaneateles, NY  
**Tax Map #057.-03-02.0**

Present: Bill Murphy, Architect  
Bruce & Patti Texeira, Owners  
Kevin Texeira

Chair Rhoads described the proposal is for the construction of a new deck and installation of a new shed on a preexisting nonconforming lot in the LWOD. The Board has conducted a site visit of the property, as previously recorded at the May meeting. The public hearing for this application was opened at the April ZBA meeting and continued at the May meeting, it will be re-opened during this meeting. Bill Murphy, Architect, updated the application had been reviewed by the Planning Board since the last ZBA meeting. The PB voted (4-1), that the use of variances is not an appropriate way to gain relief under §148-12G(6)(a). Counsel Molnar stated the ZBA has reviewed the PB letter resolution recommendation regarding §148-12G(6)(a), including the statement that this lot itself is not the appropriate lot for

conservation easement to permanently protect land and despite the characteristics of the application, this location in the configuration and size presented, this parcel is not an effective parcel to be conserved in a 10:1 ratio in the general vicinity of the area of the application. Mr. Murphy understood the PB to be asking the Applicant to purchase raw land in the full square footage to address the needs of the density issue. Mr. Murphy stated he felt the Town Engineer agreed the system would work and the numbers in the proposal are correct. It is the Applicant's position they have done a great deal to propose a stormwater system that would accommodate 300% capacity for this lot, given the current zoning, effectively bringing the ISC down to 5.4%. The PB felt this wasn't good enough, rather land in the LWOD needs to be protected and that is the only way the Town will accept proposals regarding this section. Mr. Murphy does not agree with this approach as there are not many vacant lots of land within 250ft of the lake available to purchase since most of it is already developed, and really there needs to be more stormwater management taking place to slow down water runoff within the first couple hundred feet next to the lake to help prevent algae blooms. This was the motivation for the Applicant's proposal. Meeting with the PB during the site visit, the potential for this proposal was discussed and as a result the Applicant invested funds to develop this plan. Due to the way the zoning code is written currently the PB did not feel this proposal was an acceptable substitute at this time. Mr. Murphy sought clarification on the standing of the ZBA regarding the proposed application and it was his belief that this would do everything it was designed to do, and the significant capacity would offset some of the problems created by neighboring properties.

Counsel Molnar informed that the PB stated this application as presented was not code compliant with §148-12G(6)(a) as a basic conclusion. Counsel Molnar noted John Camp, Town Engineer, stated on record at the PB meeting and in correspondence with Counsel, this is a fine proposal which would do well to handle stormwater on site but it would not do well to handle a community's worth of stormwater nor was it necessary to be larger than what would handle runoff for the site itself.

Chair Rhoads reviewed the variances being requested to ensure clarity between all parties involved with the application. The additional variance request was advertised with a public hearing notice so the additional variance could be reviewed for this application. The first variance is for the front yard setback to the shed, the second is for nonconforming lot size of less than 20,000sq. ft., and the third is for noncompliance with §148-12G(6)(a).

Vice Chair Condon stated he had some questions for Counsel. Counsel Molnar recommended the Board make a motion to have an attorney advice session if he were to be giving any legal guidance or answering questions about how the ZBA should be reacting.

**WHEREFORE**, a motion was made by Vice Chair Condon and seconded by Chair Rhoads to enter an Executive Session for attorney advice at 7:15pm. The Board having been polled resulted in unanimous affirmance of said motion.

The Board returned from Executive Session at 7:46pm.

Member Kiefer stated he felt things became difficult once the request for a variance regarding §148-12G(6)(a) was introduced to the application and the ZBA got feedback from the PB on their views for it. Member Kiefer asked if Mr. Murphy or the Teixeira's would consider going back to the original proposal, requesting variances for front yard setback to the shed and the nonconforming lot size with the agreement to pay into the DRA fund. He noted the request in its essence is a very simple one, to add a deck to a property in a neighborhood where there are many decks while reducing the ISC, seems like a straight forward variance request that would put the small-scale stormwater management conversation onto the PB as it is a simpler proposal than the one currently being presented.

Mr. Murphy responded that this is the Teixeira's decision, as he understands the question is, would the Applicant pay the \$19,000 into the DRA fund while receiving variances for the shed setback and nonconforming lot size with the stormwater management plan going in front of the PB. Mr. Murphy is concerned about paying the \$19,000 then spending an additional \$10,000-\$15,000 to construct a stormwater system just to build a small deck, the tradeoff is unfair. Member Kiefer stated he agreed; however, this is an unfortunate situation where the reality is a legislative one and the Town Board would need to make adjustments to the Code to provide the type of relief that is being requested and the ZBA is not capable of doing that. Member Kiefer continued, the ZBA is trying to view this in a simplistic fashion to make this a simple ask with three key figures; 1) a reduction in ISC, 2) this is in a permeable area, and 3) it's in a neighborhood where there are other decks; with the payment being made in line with the requirement. By taking all of those pieces back to the PB the Applicant can ask if by taking these steps will the PB require the Applicant to do a \$15,000 stormwater management plan or is there a much smaller version of that which would meet their stormwater requirements. This would be a stronger argument than the one the Applicant is currently presenting to the PB and Member Kiefer inquired whether the Applicant would consider this approach with new information for the PB. Mr. Murphy could not answer the question as it is the Teixeira's decision, although he felt the Applicant would be subject to whatever the PB deemed appropriate by taking this recommended approach. Mr. Murphy asked if it would be more beneficial to take the deck off the application at this time, continuing the application addressing only the setback for the shed, as well as the lot size variance. He stated the Applicant felt as though it is reasonable use of their property to have a deck, with it being in line and doing everything they can to meet the needs of the code but due to the hardships of the lot size, the existing structures that are on it and the fact that Terrace Lane exists on a portion of the property it is best to remove the deck from the proposal.

Mr. Murphy stated his frustration with watching the deterioration of the quality of the lake throughout his life and to finally be in a position to benefit the lake with this proposal while being told it isn't enough is difficult. It is unfortunate the legislation is set up in a way that this approach is not allowed and although the density legislation has been useful in the past few years, it is time for a change allowing another tool for applicants along these fire lanes to use to help mitigate the nutrients running into the lake as this would improve the health of the lake and its ability to withstand algae blooms.

Bruce Teixeira, owner, stated this process has been frustrating simply trying to install a new shed and permeable deck on their property. Mr. Teixeira expressed concern for runoff from pipes crossing 41A draining directly into the lake, additionally the topography that creates a flow of stormwater runoff right into the lake causing environmental issues. He stated unfortunately the house they have purchased is impermeable on a small piece of lot, however he feels his proposal is a small problem when looking at the amount stormwater runoff from neighboring properties going straight into the lake. Mr. Teixeira questioned the State involvement in regulating the stormwater runoff management. Member Ciaccio asked specifically what location Mr. Teixeira was referencing where water is running right into the lake, and if it was near the Applicant's house. Mr. Teixeira explained there is a pipe that crosses his property and empties into the Terrace Lane community area, as well as the steep topography just north of their home creating runoff issues bringing water from farmland and the road flowing directly into the lake. Member Ciaccio asked if their proposed stormwater system on their land would stop the issues described by the Applicant. Mr. Teixeira answered no. Member Ciaccio asked if Mr. Teixeira is in fact referencing multiple different locations around the lake. Mr. Teixeira stated yes, simply because of the topography, with the lake being lower than the surrounding land. Mr. Teixeira described another frustrating challenge is having the 2 front yards being on a corner lot, and if the shed were to be placed in a conforming location it would be very inefficient or difficult to access in a snowstorm. Currently there is a screen of arborvitae along Terrace Lane blocking the view of proposed shed location.

Member Ciaccio stated the Board is trying to help the Applicant achieve their goal. He explained the Board understands if the Applicant were to go back to the original plans, they would run the risk of

paying money into the DRA fund and then being required to put a large sum of money toward a stormwater system. Mr. Teixeira asked how many Board members would be able to afford to pay into the fund and install a stormwater runoff system. Member Ciaccio assured the ZBA is trying to facilitate the proposal coming to fruition within the Applicant's means, however the agency that has the final say is not going to approve the proposal as it stands now. He explained if the Applicant were to submit the application with its original terms and obtain their variances, then go to the PB with the approvals that the PB may consider allowing them to install a much smaller stormwater runoff system. He then asked if this would be acceptable to the Applicant. Mr. Teixeira stated that would be agreeable to him, however as he understands it that would not even be an option for the PB. Counsel Molnar enlightened what the PB understood was the Applicant's request for the allowance to build an elaborate stormwater management system rather than paying into the DRA fund. Counsel clarified, if the Applicant were to pay \$19,000 into the DRA fund and obtain their variances, it would then be a matter of negotiation with the PB and the PB Engineer to design a less elaborate small-scale stormwater management system that would satisfy the minimum code requirements for that lot. This may make it easier to achieve the Applicant's goal and have their application approved by the PB.

Mr. Murphy explained the cost of the proposed stormwater management plan as designed is approximately \$15,000, therefore the cost for a smaller system would be about \$5,000 since the requirement would be for 1/3 the size of the current proposal. Mr. Murphy continued the Applicant would have to pay \$19,000 into the DRA fund with the additional \$5,000 implemented for stormwater mitigation, making the total additional cost to install a permeable deck approximately \$24,000.

Member Palen asked what would happen if the deck were removed from the application altogether. Mr. Murphy stated if the deck were no longer a part of the application, the Teixeira's would still seek the installation of a new shed. Even though the shed is allowed by right, the nonconforming ISC would increase because the impermeable sidewalks would no longer be replaced with permeable walkways, and the setback would still be an issue. Member Palen asked if there was an existing shed. Mr. Murphy responded there is no existing shed, so long as the shed is 8'x10' or smaller it is allowed by right under the code, however the code is not clear in this situation whether or not the installation of the shed would count against the ISC on the lot.

Chair Rhoads asked Counsel Molnar if the installation of the 8'x10' shed alone on the property would trigger redevelopment since the deck is no longer a part of the proposal. Counsel Molnar stated as he understood installing a shed that is permissible by right on a preexisting nonconforming lot would not trigger redevelopment as it is not changing the footprint of the nonconforming structure. The proposal to add a deck onto the house, which is the nonconforming structure on this property, would trigger redevelopment of the lot. Clerk Barkdull explained, in the spirit of when this section of code was developed the question being entertained was, would the Town rather have a resident leaving their lawn care equipment sitting out on the lawn? Or would it be preferable to have the lawn care equipment stored away in a shed on a nonconforming lot? Clerk Barkdull agreed in this respect it would not trigger redevelopment, however the application would still require variances for front yard setback and nonconforming lot size. Mr. Teixeira expressed he would be satisfied moving forward with the application for the shed alone and at a later date in the future pursuing the construction of a new deck.

Vice Chair Condon asked Counsel Molnar, during the preliminary review of the application, did the PB offer any alternatives for the Teixeira's, such as paying into the DRA fund and implementing a smaller stormwater management system than the one proposed, or any other options. Counsel Molnar stated at the PB meeting they discussed the option of paying into the DRA fund as it is code compliant under §148-12G(6)(b), then it would still be subject to small-scale stormwater management requirements if the Applicant were to pursue the construction of a deck. The PB did not explain what an acceptable small-scale stormwater management plan consisted of to meet the lot requirements. Mr. Murphy stated

according to the guidelines approximately a 10'x29' structure would be required on the lot. Clerk Barkdull clarified some confusion over small-scale stormwater management systems, explaining they have been required since 2018 on any lot within the LWOD whether it has 5%, 10% or 20% ISC and it is not necessarily related to the DRA fund. Mr. Murphy stated he understands they are two separate things, explaining he and the Applicant were looking to create a new avenue to give homeowners an incentive to make improvements on the preexisting nonconforming lots while improving the water quality leaving their site. Mr. Murphy feels as though new legislation controlling the runoff and creating the filters for the nutrients is a good way to further protect the lake in addition to the density regulations that are currently in place. Counsel Molnar supported that statement explaining that is why the small-scale stormwater management systems are now a requirement, even for something as noninvasive as a subdivision. Mr. Murphy continued stating in the guideline that was published §3.3 Long Term Goals, specifically calls out that the DRA fund in the future be used for the construction of stormwater systems. Counsel Molnar added correct, within a drainage district. Mr. Murphy felt as though the proposed stormwater management system would create a district in Terrace Lane as the plan would accommodate runoff from more than the one parcel, even though it wouldn't accommodate the entire neighborhood. Mr. Murphy does not feel it is possible to find a lot that is 10x the size of the Teixeira property to conserve within 200ft of the lake. Clerk Barkdull clarified the lot could be anywhere within the LWOD, not specifically within 200ft of the lake. Mr. Murphy stated he understood this requirement, but understanding the way the water and pressure works when it gets closer to the lake the head pressure is more and in order to be most effective having a structure such as the stormwater system proposed within the last 200ft to the lake is more important than conserving land elsewhere in the LWOD.

Vice Chair Condon reviewed the responsibility of the PB according to §148-12G, discussing the possibility of reverting back to the original proposal as presented by Member Kiefer stating his support for this approach. Member Kiefer stated if the application were to be reviewed by the PB and they approved it with conditions the Applicant was not in agreement with they would simply not have to build the deck but they could still install the shed, unless they are in agreement with the PB and they build the deck and install the shed.

Mr. Murphy referred the decision on how to proceed to the Teixeira's, with the recommendation that the ZBA be allowed to vote on the variances then return to the PB at next month's meeting to determine what size stormwater system would be acceptable in addition to the \$19,000 payment. Mr. Teixeira responded it would be a hardship to pay \$19,000 and then pay additionally for a small stormwater management system as it would not be cheap.

Member Kiefer asked what the timeline is for paying into the fund. Clerk Barkdull explained the DRA fund is customarily charged by the PB as a condition, those who have paid into it have paid at the time they are submitting their building permit as that would be the last moment they could pay into the fund. Member Kiefer inquired if that meant the Applicant would know what the stormwater requirements were before paying into the fund and they could make the decision whether or not they wanted to move forward. Clerk Barkdull and Counsel Molnar confirmed that is correct. Member Palen pointed out if the Applicant were to not build the deck at all they would avoid a great deal of difficulty at this time, and if they were then inclined to become politically involved they could go to the Town Board to make a zoning change regarding this section. Counsel Molnar clarified for the Applicant, if the variances for front yard setback and lot size are approved at this meeting, then describing the process if the application were to be presented to the PB. The PB could impose conditions at the time of approval discussing them before deliberation and if the Applicant decided they were too cumbersome they could pull the deck from the application at that time and proceed with only the shed, receiving PB approval for that with no obligation to pay into the fund or build the deck.

Mr. Murphy advocated for the Applicant that the shed is something they greatly desire on the property, given the circumstances of the lot he wants to be sure the shed is not contingent on the \$19,000 payment. It is too much to pursue the deck at this time because he feels as though his client cannot move forward with both the \$19,000 payment and a stormwater system.

Vice Chair Condon suggested the Teixeira's move forward with all of the variances as requested so the Applicant could build the deck at a later date without going through the variance process again. Counsel Molnar corrected if the Teixeira's have all of the variances approved and then move forward with the PB but don't pursue the deck the ZBA variance approval would expire after 1 year. Counsel explained that Mr. Murphy would prefer to proceed with the shed obtaining approval for the 2 variances associated with that, and then come back to the ZBA at a later date for the deck. Mr. Murphy added the application would no longer require review by the PB if the Applicant decided to pursue only the shed and could be installed with a building permit alone. At a later date, the Teixeira's would be able to pursue the installation of a deck on its own after approaching the Town Board about changing the current zoning code. Counsel Molnar agreed with that statement. The Teixeira's were in agreement with the aforementioned approach described by Mr. Murphy. Mrs. Teixeira stated they would be moving into the house in a couple of weeks and would like to place the seasonal maintenance equipment in storage at that time, she inquired about the timeframe in which they could expect to install the shed if it were approved by the ZBA during this meeting. Counsel Molnar informed once the ZBA resolution has been filed with the Town Clerk, then the Applicant can file for a Building Permit to install the shed.

At this time, Chair Rhoads opened the public hearing for the shed portion of the variances requested regarding lot size and setback. Counsel Molnar recommended the application be classified as a Type II action under SEQR review.

**WHEREFORE**, a motion was made by Member Palen and seconded by Member Kiefer to consider the proposed action as a Type II SEQR action as per section 617.5(c)(12) and not subject to SEQR review. The Board having been polled resulted in the unanimous affirmance of said motion.

Chair Rhoads continued the public hearing asking if there was anyone who would like to make any comments regarding the application. No one spoke.

**WHEREFORE**, a motion was made by Member Kiefer and seconded by Member Ciaccio to close the public hearing. The Board having been polled resulted in unanimous affirmance of said motion.

At this time the Board reviewed the Five Criteria for the two area variances as one concerning the applicable sections of Town Zoning Code; Section 148-9E Dimensional Table I, the minimum lot size in the RF district is 2 acres with a minimum front yard setback of 30ft. and a minimum open space of 80%; Section 148-12G(1)(a)[1], the minimum lot area required for development of a nonconforming lot located in the LWOD is 20,000sq.ft.; Section 148-12G(1)(a)[3], the minimum front yard setback required for a nonconforming lot is 15% of lot depth but not less than 25ft. Note: the Applicant requests Area Variances to permit placement and construction of an 8'x10' shed on the Property ("Application"), as depicted on the site plan submitted by Bill Murphy, Licensed Architect, and dated February 4, 2020 ("Site Plan") with Applicant having withdrawn that portion of Applicant's initial request for permission also to build a deck to be attached to the single family residence on the Property.

Counsel Molnar stated when considering the benefit to the applicant if the area variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community, the Zoning Board of Appeals is charged with answering these five questions:

- 1. Whether an undesirable change would be produced in character of neighborhood or a detriment to nearby properties:** No. There will not be an undesirable change in the character of the neighborhood nor a detriment to nearby properties with the installation of a new 8'x10' shed. Neighboring properties have similar sheds on site. The shed will be placed in a location that is screened from most neighboring properties, as well as the adjoining roadways.
- 2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:** No. The proposal for the new shed is the most feasible for the Applicant in order to place the shed on the Property. The intended purpose of the shed is to store and organize snow removal equipment, therefore it would not be logical to place the shed in the middle of the backyard or an area where it would not be easily accessible to perform snow removal.
- 3. Whether the requested variance is substantial, within 200 feet of Skaneateles Lake, any area variance that enlarges a building or enables it to encroach into a required lake yard shall be presumed to be substantial because of the cumulative risk of degradation of the lake posed by granting individual variances. This presumption is rebuttable:** No. This variance is not substantial, as the property is allowed a shed under 200sq.ft. by right. The front yard setback of 10ft. rather than the required 30ft. is also not substantial. The shed will be screened with a row of arborvitae consequently not visible to neighboring properties.
- 4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood or district; within 200 feet of Skaneateles Lake, any area variance that enlarges a building or enables it to encroach into a required lake yard shall be presumed to have an adverse impact because of the cumulative risk of degradation of the lake posed by granting individual variances. This presumption is rebuttable:** No. There will not be an adverse impact on the physical or environmental conditions in the neighborhood. In fact, there will be an improvement to the physical and environmental conditions, as the seasonal property maintenance equipment will be stored out of sight. Additionally, the shed is not located in an area on the property where there could be potential flooding or water runoff issues.
- 5. Whether the alleged difficulty was self-created:** Yes.

**WHEREAS**, in review of the above findings of the Zoning Board of Appeals, the benefit to the applicant, as weighed against the detriment to the health, safety and welfare of the neighborhood, or community, lies in favor of the applicant. Based on the Board members' site visits and discussions before the Board at the public hearing the benefit to the applicant outweighs the detriment to the community and will not have significant adverse impacts on the character of the neighborhood or the physical or environmental conditions of the property.

**WHEREFORE** a motion was made by Chair Rhoads and seconded by Vice Chair Condon, that this application be **APPROVED** with standard conditions and additional special conditions:

**STANDARD CONDITIONS:**

1. That the Applicant obtain any necessary permit(s) from the Codes Enforcement Officer or otherwise commence the use within one (1) year from the filing of the variance decision. Any application

for zoning/building permit(s) shall terminate and become void if the project is not completed within the eighteen (18) months from the issuance of the permit(s).

2. That the Applicant shall obtain all necessary permits and approvals from any agency or authority having jurisdiction over the Property or Application; and

3. That the Applicant obtain a Certificate of Occupancy and/or Certificate of Compliance, as required, from the Codes Enforcement Officer.

4. That the Applicant notify the Codes Enforcement Officer on completion of the footing of any project for which a variance has been obtained.

5. That the Applicant provide an as-built survey to the Codes Enforcement Officer with verification of conformance of completed project within (60) days of completion of the project before a certificate of occupancy /certificate of compliance is issued.

**ADDITIONAL CONDITIONS:** The ZBA finds that the following additional conditions are necessary in order to minimize adverse impacts upon the neighborhood or community:

1. That the Site Plan, prepared by Bill Murphy, Licensed Architect, and dated February 4, 2020, be used for the installation of a new 8’x10’ shed in conformance with the plans as submitted, however excluding consideration for the deck or reduction in ISC as otherwise depicted on the Site Plan, as that portion of the Application has been withdrawn by the Applicant.
2. The Code Enforcement Officer will perform a verification of compliance in leu of an As-Built survey, with a measurement reflecting that the shed is positioned within the setback, as depicted on the Site Plan.

**RECORD OF VOTE**

<b>MEMBER NAME</b>	<b>AYE</b>	<b>NAY</b>	<b>ABSENT</b>
Chair DENISE RHOADS	—	—	—
Vice Chair JIM CONDON	—	—	—
Member MICHAEL CIACCIO	—	—	—
Member KRIS KIEFER	—	—	—
Member DAVE PALEN	—	—	—

Chair Rhoads thanked the Texeira’s and Mr. Murphy for their patience and cooperation through this process, stating she was in agreement that it had been difficult and confusing. Chair Rhoads noted there were some Town Board members listening to the Zoom meeting and she is hopeful there will be some discussion about making changes to this section of the code to exclude permeable deck structures.

**Other Board Business**

Member Kiefer stated he noticed the Kenan property which was recently approved for subdivision variances has been place on the market for sale. Member Kiefer asked if the conditions for the approval had been met, with the recording of the deed for the new parcels. Counsel Molnar confirmed as the P&Z Attorney he had received deeds for the new parcels on the Kenan property, and he was able to incorporate the language required by both Boards into the deed. Counsel recommended that all documentation is compliant with the proposed approving resolution the ZBA passed. Member Kiefer thanked Counsel Molnar for the update.

There being no further Board business, a motion was made by Member Palen and seconded by Member Kiefer to adjourn the meeting. The Zoning Board of Appeals meeting adjourned at 8:38 pm.

Respectfully Submitted,  
Kim Benda