

**TOWN OF SKANEATELES
ZONING BOARD OF APPEALS
MEETING MINUTES OF
August 3, 2021**

Present:

Denise Rhoads, Chair
David Palen
Kris Kiefer
Dave Lee
Scott Molnar, Attorney
Karen Barkdull, P&Z Clerk
Kim Benda, ZBA Clerk

Absent:

Sherill Ketchum

The meeting commenced at 7:00 p.m. at Town Hall and via Zoom. The next Zoning Board of Appeals meeting will be held on September 7, 2021, at 7:00 p.m.

Minutes

Previous distribution to the Board of the regular meeting minutes of July 6, 2021, was executed and all members present acknowledged receipt of those minutes.

WHEREFORE, a motion was made by Member Lee and seconded by Vice Chair Palen to accept the July 6, 2021, minutes as corrected. The Board having been polled resulted in (3-0) affirmation of said motion, Member Kiefer abstained due to his absence at the July meeting.

Record of Vote

Chair Denise Rhoads	Present [Yes]
Vice Chair David Palen	Present [Yes]
Member Kris Kiefer	Present [Abstain]
Member Dave Lee	Present [Yes]
Member Sherill Ketchum	Absent

Member hours for all Board members were requested and submitted for those who attended in the month of July 2021 via email.

Public Hearing

Applicant: Peter White & Mary Socci
1737 Russell's Landing
Skaneateles, NY 13152
Tax Map #063.-03-02.1

Present: Bob Eggleston, Architect
Peter White & Mary Socci, Owners

Chair Rhoads described the Applicant is proposing the demolition of the existing structures to construct a 2-bedroom dwelling and accessory dwelling with an attached garage. Variance being requested is for lake yard setback. The Board has conducted a site visit. Bob Eggleston, Architect, stated the Applicant is looking to re-build the existing dwelling in a location that is similar to what is existing, the current dwelling is conforming as it was built prior to 1996 so it is allowed a 60-foot lake yard setback. The proposed construction would be conforming to those standards; however, any new construction is required to have a 100-foot lake yard setback. Mr. Eggleston explained the integrity of the existing pier

foundation had been compromised and needed replacement as the dwelling is going to continue to be used as a year-round residence. The existing garage/carport and an accessory dwelling are both nonconforming. The proposal is to combine these two structures and create one conforming structure. Impermeable surface coverage (ISC) is being reduced from nonconforming 11.3% to a conforming 8.4%, and total lot coverage is being reduced from 16% to 14.2%. Proposed living space will increase from what is existing yet remain conforming at 10%. The footprint of the building will be improved upon to be less nonconforming.

Mr. Eggleston stated the Applicant had received approval from National Grid to move the power lines as they are currently located too close to the existing structures. The new location will be conforming with National Grid requirements for setbacks to structures. A new septic system has been approved by the Onondaga County Department of Health, it will be located over 100 feet to the lake line, on a flat portion of the property. Mr. Eggleston has been consulting John Camp, Town Engineer, with respect to the stormwater management on the property and would function appropriately on site. Primary dwelling stormwater will be directed to a bioswale on the north part of the lot, stormwater from the driveway and accessory dwelling/garage will be directed to a bioswale on the south part of the lot. A double underdrain system is being proposed on the recommendation of Mr. Camp, with a pipe disposing of the water directly into the lake. The Applicant's goal is to create a Net Zero home, therefore solar and other energy efficient products will be included in the build of the new structures.

Vice Chair Palen asked if the utility lines being moved were relative to this property exclusively. Mr. Eggleston stated yes. Member Kiefer asked when that would occur during the construction sequence. Mr. Eggleston explained it was currently under way and would be completed prior to the beginning of construction. Member Kiefer wanted to confirm the poles everything would be in compliance regarding setbacks from the high voltage wires.

Member Kiefer referenced the Szemis application from earlier in 2021, sharing concern for the shale existing on the property and how the construction and new foundation may impact the shale with 6 feet of soil on top of it. Mr. Eggleston summarized the situation with the Szemis application located approximately 1,000 feet from the White/Socci property, stating this application is much different with adequate soil on top of the shale to support a bioswale for stormwater mitigation versus the exposed shale that existed on the Szemis property 1,000 feet away. Mr. Eggleston explained the property just north of 1737 Russell's Landing did not require any variances during its renovations, but they were instructed by Mr. Camp to use a pipe directing water to the bottom of the cliff for stormwater mitigation as the structure was close to the cliff and a bioswale would have created erosion like the proposal for the Szemis property. Because 6 feet of soil exists on top of the shale at this property, the Applicant is able to create a septic system during redevelopment. In an abundance of caution Mr. Camp recommended a double underdrain to capture runoff rather than having additional water absorbed into the ground. The cliff on this lot is not a sheer shale cliff, as it has more ground coverage than the Szemis property. Member Kiefer asked how deep the drainpipes would be buried. Mr. Eggleston stated the drainpipes would be shallow, and may lay on top of the ground, it will then be secured to the side of the cliff in an effort to minimize disturbance. Member Kiefer inquired about the disturbance of the shale when digging the foundation of the dwelling, as the existing dwelling is situated on piers. Mr. Eggleston stated the work will occur from the top, pulling back the dirt, with the new dwelling sitting at a higher level than the existing house, minimally disturbing the grade change around the house.

Member Kiefer stated for the record there were previously 5 nonconformities on the property, all will be removed except for lake yard setback. Mr. Eggleston explained 3 will be eliminated, the footprint will be improved upon, and the lake yard setback will remain. The variance that is currently being requested was not an issue previously because the construction was pre-2005, post code change the new construction now requires a lake yard setback variance.

Chair Rhoads asked if anyone would like the public hearing notice to be read, no one spoke. She noted The Board has conducted a site visit of the property.

WHEREFORE, a motion was made by Vice Chair Palen and seconded by Member Lee 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 affirmation of said motion.

At this time Chair Rhoads opened the public hearing asking if there was anyone who would like to speak in favor of, against or had any comments regarding the application. No one from the public spoke. A letter of no objection was received from Lester Schmutzler, 1767 Russell's Landing.

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

Chair Rhoads asked that Counsel Molnar take the Board through the Statutory Criteria set forth in Town Code for an area variance. At this time, the Board reviewed the Five Criteria for the area variance concerning the applicable section of Town Zoning Code: Section 148-8-9-A.1.f Nonconforming Lots - Minimum Lake Yard Setback. 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 will be produced in character of neighborhood or a detriment to nearby properties will be created by the granting of the area variance:** No. There will not be an undesirable change produced in the character of the neighborhood nor will there be a detriment to nearby properties in a neighborhood consisting of seasonal and year-round residences on relatively small lots. Existing structures are relatively old, in poor condition, and the proposed structures will enhance the property and surrounding residences.
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:** Yes and No. The particular benefit sought by the Applicant cannot be achieved without an area variance as the construction of the proposed septic system and leach field combined with the size of the lot limit the location of the multiple proposed structures. If a single structure were being proposed approximately at the location of the proposed guest house it could be possible to avoid an area variance. While Five of the existing nonconformities are being eliminated with the proposal, a potential alternative to requiring the requested area variance would be constructing a new structure on the existing footprint. This alternate option is not the benefit being sought by the Applicant.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSENT
Chair DENISE RHOADS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vice Chair DAVID PALEN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member KRIS KIEFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member DAVE LEE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member SHERILL KETCHUM	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

3. **Whether the requested variance is substantial:** No. The request for area variance is not

substantial while the lake yard setback is well below the required 100-foot requirement at 64.4 feet, the proposal is an improvement from the existing setback of 60 feet. The impermeable surface coverage is being improved from 11.3% to 8.4%, and the number of existing nonconformities is being reduced from five to one. The proposed modifications to the property are substantial and should be reviewed by the Town of Skaneateles Planning Board. The Applicant did the best they could asking for the minimum variance with the circumstances the property presents in achieving the proposed outcome.

4. **Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district:** No by majority vote. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district. A majority of members concluded the Applicant and Design Professional have created a design that reduces the environmental impact of the structures near the lake. Two bioswales are proposed to reduce ground water runoff from the garage/guest house structure improving the hydrology of the site. A new septic system will be installed 100 feet from the lake, impermeable surface coverage is being reduced from 11.3% to 8.4%, and total lot coverage is being reduced from 16.2% to 14.2%. The Applicant has expressed ambitions of creating a “Net Zero” emissions property with great efforts toward being sustainable. There is concern for how substantial the construction will be and the Board requests that the construction of the bioswales and the foundation of the structures not disturb the shale beneath the soil. Based on the steep slope of the property toward the lake, erosion is evident as well as water runoff, constructing a new structure in this location could present an impact to the lake.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSENT
Chair DENISE RHOADS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vice Chair DAVID PALEN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member KRIS KIEFER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member DAVE LEE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member SHERILL KETCHUM	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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 Vice Chair Palen and seconded by Member Lee, 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.

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 and Narrative with construction sequence dated July 14, 2021, as prepared by License Architect, Robert O. Eggleston, be reviewed and approved by the Town of Skaneateles Planning Board and be complied with in all respects; and
2. The Applicant submit an As-Built survey verifying the structure is in compliance with the variance granted as well as other aspects of the Site Plan.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSENT
Chair DENISE RHOADS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice Chair DAVID PALEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member KRIS KIEFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member DAVE LEE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member SHERILL KETCHUM	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Initial Review

Applicant: Christopher Malinowski
 1659 Van Camp Rd
 Marcellus, NY 13108
Tax Map #063.-03-02.1

Present: Chris & Shelby Malinowski, Owners

Chair Rhoads described the proposal is for the construction of a new two-story single-family dwelling with a pole barn requiring variances for federal wetland setbacks. Chris Malinowski, Owner, stated it is an oddly shaped lot. Chair Rhoads inquired about the federal wetland areas on the lot. Mr. Malinowski reviewed both the federal and DEC wetlands located on the property referencing a survey from Paul Olszewski, dated July 6, 2021. The proposed structures are more than the required 100 feet to the DEC wetlands, the variances required would be for the setback to the federal wetlands as they are less than the required 100 feet. The Applicant purchased the property with the understanding there would be 8,000 square feet of building space, after the survey was completed, they were informed there was only 5,200 square feet of building space. The house will require approximately a 30ft. variance for the wetland setback. Mr. Malinowski stated the federal law does not require a given setback to a wetland area even though Skaneateles requires a 100-foot buffer to a wetland.

Mr. Malinowski stated he and his wife intend to plant trees along the road line for a privacy screen. They were looking at a few floor plans for the house, the one reflected on the site plan is a total of 2,600 square feet with a footprint of 1,300 square feet as it is a two-story house. The approximate ISC calculation for

this footprint is 2%. The Applicant will incorporate a riparian buffer along the road line, as well as between the house and the wetland areas to mitigate the setback concern. Vice Chair Palen asked what the grade of the lot is and if it flows toward Van Camp Road. Mr. Malinowski explained there is not a steep grade to the property, and it flows away from Van Camp Road into a valley like area behind the proposed house. The Applicants were shopping 3 different modular companies which is why the site plan reflects a 2,600 square foot home as it would be the largest of the three options requiring the greatest variance possible. Since the site plan was created Mr. & Mrs. Malinowski have selected a 2,400 square foot modular home that will require smaller wetland setbacks than what were originally requested. He submitted an example of the proposed floor plan that was selected to the Board.

Member Lee asked how active the streams on the property are as the neighbor across the road has the sides lined with rocks. Mr. Malinowski has been in contact with neighbor Al Stevens, and he explained the rocks were placed on the sides of the stream a while back as there is a significant amount of water that runs through in the spring from the snow melt. The water runs through a culvert under Van Camp Road into the stream and then deposits from that stream into another stream. It is dry for the majority of the year, until the snow melts in the spring. Mr. Malinowski plans to reinforce the stream bed with rocks like the neighboring property to protect it. Member Lee inquired about the proximity of the pole barn to the stream. Mr. Malinowski described there is a naturally existing clearing where the pole barn is proposed, the proximity to the stream would be best understood during the site visit.

Chair Rhoads verified the required variances with Clerk Barkdull. Clerk Barkdull reviewed the three initial variances requested would still be required with new calculations since the proposed house is now smaller, there will have to be reevaluation of any additional variances depending on the proximity of the stream to the barn. Mr. Malinowski confirmed the building envelope and the areas that will require a variance reflected on the site plan for the Board. Member Kiefer asked where the proposed driveway will be located. Mr. Malinowski pointed to the proposed location of the runner crush driveway for the Board on the site plan. Member Kiefer asked what the purpose of the pole barn would be. Mr. Malinowski stated it would be for the lawn mower and a couple of tractors so the attached garage could be utilized for parking the family cars.

Member Kiefer sought clarification that the requirement for the setback to the federal wetland is a Town requirement and not Federal. Clerk Barkdull stated the Town does not differentiate between federal or DEC wetlands a 100-foot setback is required for any wetland.

Member Lee requested a drawing of the property depicting contours of the topography for the record. Mr. Malinowski agreed to submit that to Clerk Barkdull when it is completed. Member Kiefer requested the site plan also be updated with the correct setbacks to the wetland since the footprint of the house differs from that which is currently reflected on the site plan. Member Lee recommended the Applicant consider alternate pole barn locations; the Board was not able to suggest a new location until after the site visit. The Board asked Mr. Malinowski to stake the property where the wetland setbacks are as well as the proposed structures for the scheduled site visit.

A site visit was scheduled for *Saturday, August 7, 2021 at 8:00 am*.

WHEREFORE, a motion was made by Member Kiefer and seconded by Vice Chair Palen to schedule the public hearing for *Tuesday, September 7, 2021 at 7:02 pm*. The Board having been polled resulted in unanimous affirmation of said motion.

Mr. Malinowski asked what the next steps in the variance process will be. Chair Rhoads described the next steps the Applicant will have to take, beginning with the site visit.

Other Board Business

Planning Board Lead Agency Request

Clerk Barkdull summarized the Planning Board (PB) is requesting Lead Agency as it is re-opening SEQR on the Fox Run Subdivision, previously known as the County Line Road Subdivision. Counsel Molnar explained during the previous SEQR review the PB found a negative declaration as the subdivision does not present any environmental impact therefore issuing approvals for the Applicant's preliminary plat and subdivision plans which are pending. The Applicant has come before the PB and Town Board (TB), requesting approval to build the project in 3 phases due to financial constraints of building a project of this size. The application is in front of the PB currently and they have decided to re-open SEQR since a phased project differs from one project start to finish. The PB re-issued lead agency requests to all interested/potentially interested agencies. Due to there being no ZBA involvement with this application Counsel Molnar recommended the ZBA consent to the PB acting as lead agency, noting there is no action required by the ZBA unless there were objections from the Board.

WHEREFORE, a motion was made by Member Kiefer and seconded by Vice Chair Palen that the Zoning Board of Appeals consents to the Planning Board acting as Lead Agency on the Fox Run Subdivision application, with no action required by the Zoning Board of Appeals. The Board having been polled resulted in unanimous affirmation of said motion.

Cannabis Opt-in/Opt-out Referral

Clerk Barkdull informed the ZBA that the TB would like to know what thoughts the PB and ZBA have on cannabis being in the Town. If the Town were to opt-in to cannabis being available in the Town what would that look like, would it be restricted to certain districts in the Town, would hours of operation be restricted, would we allow dispensaries with no on-site consumption, would we have retail with consumption on-site? Clerk Barkdull noted there will be an informational meeting held at the Austin Pavilion Tuesday, August 24th at 7 p.m., with members of both the Town and Village Boards in attendance. Municipalities can opt-out prior to December 31, 2021 then opt-in at a later date, however if a municipality decides to opt-in by December 31, 2021 they will not be able to then opt-out. Clerk Barkdull explained by opting-in there are significant taxes on cannabis and 3% goes to the local municipality which would be split between the Town and Village if the Village were to opt-in as well. The Board decided to do some research prior to making their referral to the TB and will submit a statement as soon as possible.

There being no further Board business, a motion was made by Vice Chair Palen and seconded by Member Kiefer to adjourn the meeting. The Zoning Board of Appeals meeting adjourned at 7:59 pm.

Respectfully Submitted,
Kim Benda