

**TOWN OF SKANEATELES
ZONING BOARD OF APPEALS
MEETING MINUTES OF**

February 7, 2017

Present:

Denise Rhoads
Jim Condon
Sherill Ketchum-absent
David Palen-absent
Mark Tucker
Scott Molnar, Attorney
Karen Barkdull, P&Z Clerk

The meeting commenced at 7:00 p.m. at Town Hall. The next Zoning Board of Appeals meeting will be held on March 7, 2017 and there is no site visit scheduled this month. Previous distribution to the Board of the regular meeting minutes of January 3, 2017 was executed and all members present acknowledged receipt of those minutes.

WHEREFORE a motion was made by Member Condon and seconded by Member Tucker to accept the January 3, 2017 as submitted. The Board having been polled resulted in unanimous affirmation of said motion.

<u>Record of Vote</u>			
Chair	Denise Rhoads	Present	[Yes]
Vice Chair	Jim Condon	Present	[Yes]
Member	Sherill Ketchum	Absent	
Member	David Palen	Absent	
Member	Mark Tucker	Present	[Yes]

Discussion

The Onondaga County Planning Federation will be hosting their annual planning symposium on March 2, 2017 that will include a day of training on various planning and zoning topics Member Tucker will be attending the training.

Discussion

An advertisement for a part time ZBA Secretary has been placed with the last day for interested individuals to submit their letter of interest is February 10, 2017.

Public Hearing

Applicant:	Rick & Debbie Moscarito	Property:
	120 Madison St	1813 Russells Landing
	Chittenango, NY 13037	Skaneateles, NY 13152
		Tax Map #063.-03-13.0

Present: Robert Eggleston, Architect; Jeff Davis, Attorney

No one wished to have the public notice read. Site visits have been conducted by the Board at this site with the most recent site visit on November 19, 2016. The Onondaga County Planning Board recommended that updated approvals are obtained for the City of Syracuse Department of Water, the New York State Department of Environmental Conservation and the US Army Corps of Engineers prior to approving the proposed application in their resolution dated January 25, 2017. The City of Syracuse Department of Water had no comments in their correspondence dated December 29, 2016. The OCDOH has approved the proposed septic system on May 7, 2015.

Mr. Eggleston began by stating that variances approved in 2000 and 2010 for development of a single family dwelling had expired due to financial reasons. The property has a number of barriers to it as it has steep slopes with some greater than 30%, National Grid and Verizon easements that pass through the middle of the lot similar to other properties on Russells Landing, and has a seasonal watercourse on the south side of the property. These conditions provide a minimal area in which development could occur that would comply with all of the zoning laws.

The septic system plan was designed as a conventional Elgin system which is a more efficient septic system than a traditional system and is located on the flat portion of the lot that is over 100 feet from the lake line. The Ross property to the north also utilized an Elgin system for their septic system.

This proposal is for a smaller dwelling built on piers and without a walkout basement, as suggested by the Zoning Board of Appeals, that is similar to the Ross dwelling located further north on Russells Landing. A portion of the dwelling will be located in an area with the slopes less than 30% with a portion located in slopes over 30%. The proposed dwelling has 35sf of disturbed area within the steep slope area for the footings of the piers. The footings will be either hand dug or an auger can be attached to a backhoe and then drilled down. The footprint of the dwelling has been reduced to 840sf with an attached 160sf porch, with the floor space of the dwelling reduced from 2,278sf to 1,840sf.

Other improvements to the lot that do not require a variance are the stairs that transverse across the steep slopes that are allowed to be in the steep slope. There is a deck at the shoreline that sits on top of the cliff that is allowed to be constructed without a variance. It will have a bridge that will lead to a stairs tower that leads to a dock. The stair tower and dock are not in the purview of the Town. There will also be a 160SF shed that is allowed by right that is conforming to all setbacks located in the southwest area of the lot. Those structures and the driveway can be constructed without a variance.

The neighbor to the north, Dick Tackley, had recommended the use of lattice to conceal the piers of the dwelling to dress up the lower area of the dwelling. New drawings dated January 31, 2017 reflect the suggestion of the lattice that was similarly used on the Ross dwelling. Drawing 2 of 2 reflects the electrical line, access easement for the telephone company, and an abandoned road right of way, with the existing easement access located on the south side of the property. The original subdivision creating Russells Landing had the lots with a narrow road coming through that was changed so that the road was placed further west as it is today. The septic fields are

more than 100ft from the lake and watercourse; and that will have a split rail fence to deter vehicles from the septic field. If necessary, the split rail fence can continue along the northwest side to protect it from access to the Tackley property.

There will be a minimal amount of trees removed from the property, as the only trees removed will be within 10 feet of the proposed dwelling location. There are many mature trees on the property that will remain with some selective trimming of the trees for views of the lake for the proposed dwelling.

Mr. Eggleston stated that the lot is plagued with some environmental issues that if the lot is left undeveloped will leave the issues unchecked. He continued stating that there is stormwater drainage from the Tackley driveway that is diverted to the applicant's lot once it passes the Tackley woodpile. The applicant is employing the same environmental mitigation as with the prior proposal, including the drainage from the Tackley drive directed to the 200sf rain garden that will filter the water and then the water would be collected by an 8 inch pipe, with the water traveling horizontally in the flat area at the top of the bank. The pipe would be laid two feet down with a secondary perforated pipe collecting stormwater from the french drain that will go on top of the two pipes to pick up any surface water, with the drainage directed to the watercourse. The amount of stormwater coming down the steep bank will be minimized. The existing conditions have the stormwater flowing over the existing lot and cliff directly to the lake.

The watercourse will receive the stormwater in addition to the stormwater that comes from the farm fields to the west. There is a farm BMP drainage plan that has a retention pond that collects the stormwater and releases it slowly to help control the runoff. When it was installed on the watercourse located on the farm property, it was reinforced but there was no improvement done on the portion of the watercourse located on the applicant's property. Proposed is for the watercourse continuing from the farm watercourse would be lined with filter fabric and rock with larger boulders in the center that will function as check dams to slow the water. Mr. Eggleston continued stating that if the lot were not developed there would be no compelling reason to fix the watercourse erosion. Any stormwater off the house itself will be directed to the watercourse. One of the mitigating factors to being able to develop this lot is that they will be able to take care of two very serious water problems that are currently unchecked.

There is a swale that runs across the farmer's property where a tree fell during a storm that breached the stone lined ditch, causing water to flow onto this property and the Tackley property. The tree has recently been removed and if the farmer does not repair the ditch then the applicant will do so.

The December 22, 2016 letter from Jeffrey Davis of Barclay & Damon, on page two has a chart that reflects the reduction in the size of the proposed dwelling from 2,278SF to 1,840sf; impermeable surface reduced from 9.5% to 8.5%; floor space from 8.9% of the lot to 7.2%; footprint reduced from 5.5% of the lot to 4.5% of the lot; lake setback increased from 61.5' to 66.5'; and watercourse setback increased from 41' to 41.4'. The side yard setback from the Tackley property could be as close as 30 feet; however, the proposed setback is 58 feet to keep

the proposed dwelling away from the slopes over 30% on the north side. The west side of the property will remain wooded.

Mr. Eggleston continued stating that there was a lot of incentive from the Zoning Board to consider a solution that Tim Ross had. The Ross lot is only 10,000sf with this lot at 25,726sf. Attachment A reflects that the Ross lot is 58% smaller with only 71.6ft of lake frontage, the dwelling is similar in location to the lake as this proposal, and the impermeable surface coverage is at 9.9% whereas this proposal will be at 8.5%. The Ross footprint is 4.9% and the applicant's is 4.5% of the lot; the floor space is 9.4% of the lot for the Ross property and this one is 7.2%; and the applicant's lot is 1.5 times larger than the Ross lot. Proportionately, the size of the house compared to the Ross house, this proposal is comparatively smaller compared to the size of the lot.

Mr. Eggleston stated that the chart regarding the properties that are ten north and ten south has been updated to include additional information. In bold are the properties that have a greater footprint than what is proposed. Out of the properties listed, thirteen property have high floor space to lot ratio than the proposal. Although this is a challenging lot with environmental issues, the improvements to the drainage mitigate any concerns of development of the lot with the variances requested.

Member Condon inquired if the applicant has reached out to the easement holders on the lot. Mr. Eggleston stated that they had reached out to National Grid and Verizon and had only received a reply from National Grid. National Grid commented that to move the power lines would cost \$40,000-\$50,000 and Verizon has not responded. Member Condon stated that he is more concerned about the access. Mr. Eggleston explained that they will have access to their line and the area is shown in orange on drawing 2 of 2. They do not have a right to cross the septic field. Member Condon inquired if they are alright with the septic pump line going through the easement. Mr. Eggleston stated that there is no problem. Mr. Davis commented that the easement is not an exclusive easement.

Member Condon stated that the board did mention putting the house on piers similar to the Ross dwelling; however this lot has a lot of challenges and that the Onondaga County Planning Board had recommended that updated approvals are obtained from the City of Syracuse Department of Water, the New York State Department of Environmental Conservation and the US Army Corps of Engineers prior to approving the proposed application. Mr. Eggleston stated that City of Syracuse Department of Water had submitted a no objections letter, there are no DEC requirements for the proposal although there will be a DEC permit required for the dock that is not within the Town's jurisdiction, and the ACOE is not required for the proposal. The waterline will not be buried but will sit on top of the lake bottom, therefore not requiring a permit.

Member Condon commented that he had spoken with the Onondaga County Department of Water Environment Protection about the property being seasonal or rental and they have a concern about that and the stress on the lot with a potential of an overuse of the septic system. They suggested having the system pumped monthly to offset the additional use. Chair Rhoads inquired if there was any consideration of a lot line adjustment with the farmer behind the

property to provide a larger lot for development away from the slopes. Ms. Callahan stated that the owner does not have the financial backing to be able to consider that option. Ms. Elliott stated that this lot has been for sale for a long period of time and the owner has struggled to pay the property taxes and there is finally someone who is willing to consider the lot.

Mr. Davis commented that there are easements on the property, and that each variance is almost identical or consistent with others on the street. The lake yard setback is further back than the Ross property and the Tackley property. The watercourse setback to the south is not a setback requirement for the other properties; however, we have made that worse in order to accommodate the narrowness of the lot and the steep slopes on the property. This difference in this application to the others is the slope and the applicant has tried to minimize that by placing the proposed dwelling on piers with 35sf of disturbance in the steep slope area. The Ross property did not exceed 30% slopes, and with this property between 30-36% slopes, it is a minimal difference. Mr. Davis stated that many of the homes on Russells Landing have restrictions and that they have done the best they could to work within the restrictions. The benefits of the proposed development outweigh the variances to setbacks and 35sf of development in the steep slopes. Development plans have been approved twice on the property with larger homes that would have been constructed had it not been for financial concerns, and the proposal fits with the neighborhood.

Member Condon commented that most of the properties were developed before the current code was developed and that some of the zoning codes developed may have been instituted because of the prevailing development patterns in the neighborhood. Mr. Davis acknowledged that even since 2010 and now there have been zoning code updates that modified the overall variance request. The proposal is consistent with what is in the neighborhood now based on the setbacks, and sizes of the dwelling there now. It has been an approved building lot and this is the third time in front of this Board with someone who has the means and wants to develop it. It is in the same community character as what exists today.

Mr. Eggleston stating that regarding the watercourse setback, it is an arbitrary number that a municipality chooses. The watercourse is an intermittent watercourse that occasionally runs. None of the water from the existing developed area would run into the watercourse because it will run parallel to the watercourse and over the cliff if it weren't fixed. The intent of a watercourse setback is to protect the watercourse; however, development on this lot would have very little impact on this watercourse without the stormwater plans proposed to redirect the stormwater to the watercourse and with the watercourse remediation plans proposed. Member Condon commented that the watercourse is large and when it runs the water is fast moving.

Member Tucker commented that permission to repair the ditch on the farm land will need to be obtained prior to the work being done unless the farmer will be doing the repairs. Mr. Eggleston stated that Mr. Moscarito will repair the area if the farmer does not want to do it as it would keep the stormwater from running on the property and causing erosion. Member Condon commented that the applicant would be going on the Tackley property for the rain garden. Mr. Eggleston clarified that Mr. Tackley is aware of the proposal to manage the stormwater coming from his property onto this property. Member Condon commented that Mr. Tackley mentioned that the

stormwater could be caused by the broken culvert on the property and could be part of the problem.

Member Tucker requested an explanation of where the mechanicals will be located on the property. Mr. Eggleston stated that the water heater and water pressure tank will be suspended on a platform under the house behind the lattice work, with the area able to be heated.

Member Tucker commented that he had done a site visit on the property today and the character of the house is in keeping with the neighborhood. The Tackley house is on a steep slope and there are a number of the dwellings in steep areas that were built previously before the zoning.

WHEREFORE, a motion was made by Member Tucker and seconded by Member Condon to consider the proposed action as a Type II SEQR action as per section 617.5(c)(13) and not subject to SEQR review. The Board having been polled resulted in the unanimous affirmance of said motion.

At this time, Chair Rhoads opened the Public Hearing and asked if there was anyone in favor of the project.

Rommy Callahan, representative for the property owner Kerrin Hopkins, commented that obviously this is a complicated lot and that the owner has had to sell it as health problems have prohibited her from building on it as she would have liked. If this person who is willing to go through everything to develop the lot, the Board should approach it as it will stay within the spirit of the neighborhood. If he cannot do it then I feel it is an unbuildable lot. It has been on the market for years and is listed below assessed value.

Molly Elliott, representative for the potential purchaser of the lot, commented that the lot has been on the market for several years and she has represented Kerrin in the past. I have looked at the tax rolls and our own Town had is assessed at half a million dollars, and she has worked hard to meet the taxes. As representing Rick Moscarito, he has maintained every property he has ever purchased in Skaneateles. There would not be an erosion issue as he would not let it happen or address it immediately. He will listen and follow suit of any condition this Board may place. To let it sit there, who else is going to buy it. He has spent a lot of money to attempt to obtain approval and if he doesn't then who will. The Boards had already approved it two times in the past and now he is putting something smaller on it with seasonal use. I hope that everyone would look at that and the applicant, and know that he will take care of the property.

Bob Eggleston commented that the applicant is not limiting the application to seasonal only as the dwelling is required to be insulated to year round standards per NYS building code due to the inclusion of a fireplace. The likelihood is that it would be used seasonally. Chair Rhoads inquired if there were any other comments.

Mark Tackley, son of the neighbors to the north, stated that in the 1970s the Tackleys wanted to buy this lot in addition to the one they acquired, from George Maturevitz. In the 1980s he built his existing house that is closer to the lake. When there is an attorney in the room saying that

there are houses that are built closer, that was 37 years ago. There is a reason why you require the setbacks you do and all of the restriction you have. Also, there are many reasons that lot has never been built on. I personally feel that the lot should be deemed unbuildable and whatever we need to do to keep it forever wild. If you spent forty plus years like I have out on that property and the surrounding areas and down at the lake, you will see big areas of cliff along the lake that have fallen. To the south where they want to build, you will see a piece jutting out that is going to fall again and a piece fell several years ago. If you go and disturb 35sf or 3,000sf, you are going to have a problem, and you are going to have a cliff falling not only on that property but it will work its way down to my parents and it is going to keep going down. You can look in that whole area within a couple 100 yards each way and you going to see huge pieces of cliff that have fallen. I look at the drawings and I am not sure that the DEC will let someone go on that cliff edge and drive something into the ground. Like with the stairs going down the cliff. I don't believe they are going to want something going down there, down an unstable cliff that is currently there. Then put whatever the structure is going to be down there. That is going to be permanent because you can't do anything with it because the water comes right up to the cliff. That whole area on the south side of the dock is flat rock and a lot of fish spawn there like bass in the early spring. I think what you are disrupting is this lake and what it has been about for so many years. You sit in the room and you know what is allowed and not, there is talk about variances of what could be done and what cannot be done, to allow something to be put in that shouldn't be put in. When Bill Fuccillo was the first to buy the property, he did not build because he realized it was too much to do what he wanted to do. You can go back all the way to the 1970s and there is a reason why that lot has not been built on. You are trying to protect the environment, I only am concerned about the integrity of that lot and that area of the lake. There is only so much area left on Skaneateles lake and what people are doing to make income off of it. All the representatives here for the applicant are being paid, and Mr. Moscarito, who my father says is a really nice guy, is not here.

Molly Elliot recommended that the Tackleys should buy the lot.

Mr. Tackley stated that his father doesn't have the money to buy it. I think you are asking for more problems if you allow anything to be built on that property. Small rain garden, no rain garden, rocks; you start disturbing that soil whatsoever, I am telling you that if you disturb that cliff you will see both sides of that property start falling down. You can walk on my parent's dock and look back and see a lot of shale cliff that has fallen in that area. Mr. Moscarito, I am sure he is a nice guy, but he has five or six properties around the lake that are rentals, so you know it is going to be a rental property. He has even told people that; is that what we need, rentals on that property with renters coming and going every month. It is not just two people and you will have septic issues. I think it would be horrific if there is anything built there. My father is getting pretty old and both my parents have health issues, and they would have loved to have bought the property.

Chair Rhoads commented that Dick Tackley's letters have been received by the Board. Counsel Molnar stated the letters are part of the permanent record and part of the deliberation of the Board for their determination. Chair Rhoads inquired if the Tackley's were in favor of the proposal. Mr. Tackley stated that his parents are not in favor of the proposal, and that it has to

do with the land and not the people. He continued stating that it is like Niagara falls after a storm event.

Member Condon commented that it appears that Mr. Tackley likes the lot a lot and it is deteriorating. The applicant is willing to fixing the watercourse and do the work to fix the extension to the watercourse correctly, correct the swale that is broken on the other property, and correct the runoff on your father's driveway, or the property could continue to erode for another fifty years. There is a balance and someone is not going to buy the property to leave it forever wild and fix the issues. What we are looking at something feasible for the property, not a huge house that was approved with variances years ago with different Board members. The property would be better. If you weigh it out what is better for the town and for the lake, that keeps eroding away and never fix the swale with the water coming across it and across the driveway, that cliff will probably fall next year below on someone who is fishing. I hear what you are saying and I agree with a lot of it but the balance we do with the lot sitting there empty and someone wanting to take care of it. The properties he has around town he does take care of and he rents them. He takes care of the upkeep, he is not going to rent them for \$100 a month. he is going to get high rent. We do a balance game here and listen to all of the point and facts We look at the whole thing and ask all of the tough questions; we do not take our decision lightly.

Mr. Eggleston stated that he wanted to correct the record in that Dick Tackley, in his January 24, 2017 letter, said that he had partial objections and not total objections. The cliff has been falling faster at this location because the lot is undeveloped. Where you have developed properties, you control the rain water, you control the drainage and get less erosion of the cliff and the lake. The rate of erosion of that cliff will significantly decrease if it is properly managed. We are putting in a french drain, cutting back on the amount of water that is there now and there will be no impact of additional water as a result of development of the lot but rather a significant decrease in stormwater. We will finish the job the farmer wasn't able to do because it wasn't his property. The DEC and ACOE has no jurisdiction against the deck that is built on top of the cliff. While Mark Tackley was suggesting the DEC would not allow it, the DEC has no jurisdiction as their purview is from the high water out and will have jurisdiction over the dock and the stair tower. There are several dozen stair towers in the area as a means of getting down to the lake. The property has been on the market and obviously if someone wants it forever wild they should buy it, and if not, understand that this lot has been taxed as a building lot where you can build thirty feet off the property line Rick has accommodated the Tackleys by pushing the proposed dwelling further away and minimized the number of windows on that side of the dwelling. This would be a second home for Rick who is attracted to the property that has 150ft of lake frontage, and is prepared to do it correctly.

Mr. Davis stated that in his correspondence dated February 6, 2017, he talks about the rental nature not being appropriate for this Board to consider as rentals are allowed in the town and has been part of the town culture forever. The prior application that was before the Board was supported by the Tackleys that was reviewed by this Board at the December meeting. Nothing has changed other than the dwelling has gotten much smaller and built on piers. The change in their opinion seems to suggest the fact that it might be rented, and that was alluded to in the first letter received from the Tackleys with their concern if it was rented next door and people having

bonfires. This is not under the jurisdiction of this Board and it should not be considered when weighing the criteria.

Mr. Tackley stated he brought it up because it was a concern with the Onondaga County Department of Water Environment Protection.

Mr. Eggleston stated that there is no prohibition of rentals for short periods in the Town of Skaneateles. Rick abides by the rules and when the village stopped short term rentals, he stopped renting on a short term basis right away. He is a person with a lot of integrity. We are looking at a single family dwelling and would be permitted to do anything the Tackleys could do with their property or anyone else in the town can do with their property.

Mr. Davis stated that there are three members here tonight of a five member Board and are requesting that the application be continued when there are all five members present. Chair Rhoads stated that they will keep the public hearing open at this time.

Member Tucker requested clarification on the drainage plan. Mr. Eggleston explained that it would be a swale with an eight inch pipe underground with a 4 inch perforated pipe, the swale will be an open swale that can be mowed. Member Tucker inquired if there will be a swale down near the shore where it goes into the lake. He continued stating that he was at Terrace Lane on July fourth, where there was an open field that was falling in the lake. Mr. Eggleston stated that they did the same thing and put a swale at the top of the steep slope at Terrace Lane. One of the problems was the ditch along the road had filled in causing a lot of spillage across the road. They did two things, put in the french drain along the top of the bank and they corrected the ditch. Member Tucker commented that the remediation is an idea that was done with an open field like what we are looking at now and that the bank was falling also, but where the houses were the bank wasn't falling. Mr. Eggleston commented that the tendency of nature is to erode to a spherical earth with earthquakes that create mountains. This is natural erosion that has developed on an undeveloped lot

WHEREFORE, a motion was made by Member Condon and seconded by Member Tucker to continue the public hearing on *Tuesday, March 7, 2017 at 7:05 p.m.* The Board having been polled resulted in the unanimous affirmation of said motion.

Discussion

Mr. Brodsky has prepared an analysis of the existing zoning code in terms of organization, sequencing and ease of use. He continued stating that portions of the code should have tables developed for easier determination of the regulations such as a sign table, and nonconforming setbacks for nonconforming lots. Many times there are regulations with numerical aspects that are buried inside a code section and not easily located. Section heading should be on every page and the page numbers should be consistent in all versions of the code-printed and website. Definitions should be located in one section and there are examples of where there is more than one definition for the same term. The analysis does not include any recommended policy changes as that was not requested as part of the project. Subdivision code that is located in the zoning code is recommended to be moved to the subdivision section of code.

Member Condon commented that it would be helpful for the code to be hyperlinked to refer to the additional sections and definitions. Management of the code with the official copy and website is coordinated through the Town Clerk's office. Member Condon suggested that the code have pictures and illustrations included to provide more clarity to the code.

Comments and conversations as to why sections of code are being changed get lost after the code is modified. There should be an amendment section with procedures based on the magnitude of the proposed modification as not all amendments requested are the same.

Mr. Brodsky stated that he is advocating a style in the re-formatting of the code where each district has the code listed so that a user could determine what sections of the code apply to their property based on the district it is located in. Zoning code changes take longer than most people expect. Mr. Eggleston commented that the 2005 zoning code change was begun after adoption of the 1996 zoning code and took several years. It took about two years to adopt the abandonment legislation. Member Tucker commented that in 2004 the Planning Board was meeting three times a month just to review the zoning changes. He continued stating that the organization of the existing zoning code needs to be re-developed so that it is easier to locate relevant sections. Mr. Brodsky stated that he is eliciting an endorsement from the Zoning Board of Appeals that it supports his diagnosis.

WHEREFORE a motion was made by Member Mark Tucker and seconded by Member Jim Condon, the Town of Skaneateles Planning Board endorses the analysis presented by Mr. Brodsky to the Town Board, and that the development of the draft document is pursued. The Board also recommends that the Town Board engage Howard Brodsky to produce the draft, reorganized and recodified, which in turn will allow the boards to review and further evaluate the existing zoning code. The Board having been polled resulted in the unanimous affirmance of said motion.

<u>Record of Vote</u>			
Chair	Denise Rhoads	Present	[Yes]
Vice Chair	Jim Condon	Present	[Yes]
Member	Sherill Ketchum	Absent	
Member	David Palen	Absent	
Member	Mark Tucker	Present	[Yes]

There being no further business, a motion was made by Member Condon and seconded by Member Tucker to adjourn the meeting. The Zoning Board of Appeals meeting adjourned at 8:55 p.m.

Respectfully Submitted,
Karen Barkdull