

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

**September 6, 2016**

Present:

Denise Rhoads  
Jim Condon  
Sherill Ketchum  
David Palen  
Curt Coville  
Scott Molnar, Attorney  
Karen Barkdull, P&Z Clerk

The meeting commenced at 7:00 p.m. at Town Hall. The Board discussed the potential need to change the meeting date of the October meeting from October 4, 2016 to October 11, 2016 to provide adequate board representation.

**WHEREFORE** a motion was made by Member Ketchum and seconded by Member Palen to reschedule the October Zoning Board of Appeals meeting to October 11, 2016. The Board having been polled resulted in unanimous affirmation of said motion.

Site visits will be conducted on Saturday, September 10, 2016. Previous distribution to the Board of the regular meeting minutes of August 2, 2016 was executed and all members present acknowledged receipt of those minutes.

**WHEREFORE** a motion was made by Member Palen and seconded by Member Ketchum to accept the August 2, 2016 as corrected. 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	Sherill Ketchum	Present	[Yes]
Member	David Palen	Present	[Yes]
Member	Curt Coville	Present	[Yes]

**Initial Review**

Applicant:	Tammy Fischer	Property:
	50 East 28 <sup>th</sup> St, Apt 10L	2330 Thornton Grove South
	New York, NY 10016	Skaneateles, NY 13152
		<b>Tax Map #056.-03-12.0</b>

Present: Robert Eggleston, Architect

The applicant has owned the property for the last eight years and has been using the property as a summer cottage. The seasonal single story cottage is 704 square feet with two bedrooms and one bathroom. Proposed is a change to the roof line to a cape style cottage on the same footprint.

The height of the dwelling would increase from the existing 16'6" to 22', and adding a 248SF bedroom to the second floor. The existing dwelling is located 46 feet to the lake; the second floor expansion is not located over the small portion of the cottage that is within 50 feet of the lake line. The existing septic system is being evaluated for the continued use as a two bedroom cottage as there will be no increase in the number of bedrooms on the property. The existing septic system employs the use of a septic tank and three drywells. The variances requested are for the nonconforming lot size and lake frontage, the lake yard setback under 100 feet, and expansion of a dwelling within 50 feet of the lake line.

The majority of the dwellings on Thornton Grove are small seasonal cottages on small lots, and the applicant's property is in keeping with this neighborhood. The cottage does rest on piers that allow stormwater to go underneath. It also has a seasonal gravel and grass driveway, and the applicant has no intentions of paving the driveway. Impermeable surface coverage is 23% will be maintained at 23% with no footprint expansion. The 1.5 feet north side yard setback and the 22.7 feet south side yard setback are being maintained. The expansion of the dwelling is less than 500 square feet maximum allowed. The cottages on each side are seasonal cottages that have been improved over the last few years.

Member Condon inquired on the boathouse that is shown on the site plan. Mr. Eggleston stated that the boathouse is not a boat slip, but is used for storage primarily for kayaks and has no finished space inside. Member Condon inquired on the existing bedroom count. Mr. Eggleston commented that the existing second bedroom is located where the proposed living room would be located. Member Palen inquired if there would be a septic system change required. Mr. Eggleston commented that the OCDOH will want to evaluate the existing system to confirm that it can continue to support two bedrooms, and if not, would then require modifications the applicant would be required to comply with.

Member Condon inquired if there are any patios that might be added to the property. Mr. Eggleston stated that there are no proposed patios and that the applicant will continue to use the existing deck that is over the boat house. They are proposing the addition of two doors on the east side of the dwelling as there is only one door on the dwelling that is located on the south side of the dwelling. Member Coville inquired if the neighbors are in support of the project. Mr. Eggleston stated that the neighbors love the project and that letters will be forthcoming.

Member Condon inquired about the use of the drywells. Mr. Eggleston explained that the drywells are about 4-5 feet in diameter and go down 3-4 feet. For a seasonal cottage, the utilization of the drywells is very effective.

Member Condon inquired how the removal of the roof will occur as it might require heavy machinery. Mr. Eggleston stated that the removal will probably occur by hand because they are preserving the first floor. Bobcats may be used to assist and the drywells will be protected from the construction activity. Access for construction would occur from the back of the dwelling. Member Palen inquired on the type of construction of the dwelling. Mr. Eggleston stated that it is wood frame construction resting on block piers that are in good condition. A site visit will be conducted on September 10, 2016 beginning at 9:30 a.m.

**WHEREFORE**, a motion was made by Member Coville and seconded by Member Condon to schedule a public hearing on *Tuesday, October 11, 2016 at 7:10 p.m.* The Board having been polled resulted in the unanimous affirmation of said motion.

**Decision**

Applicant: Kerrin Hopkins  
27 Fennel St # 178  
Skaneateles, NY 13152

Property:  
1813 Russells Landing  
Skaneateles, NY 13152  
**Tax Map #063.-03-13.0**

No one was present to represent the application The application was first heard at the January 5, 2016 Zoning Board of Appeals meeting, public hearing opened at the February 2, 2016 meeting, with the public hearing continued each month and closed at the August 2, 2016 meeting. An email was received from the applicant that provided a personal update but did not address the status of the requested information for the Board including the status of the utility easement and watercourse easement or alternatives in design to reduce variances requested.

Chair Rhoads stated that the Board has a limited time to render a decision on the application since the public hearing was closed last month. Counsel Molnar stated that the Board has 62 days to render a decision or the request for variance is approved without action by the Board. Member Coville inquired if the new abandonment law could be applied to this application. Counsel Molnar stated that there has been communication from the applicant via this most recent email correspondence, so there has been some communication. It is neither a request for extension nor any other update as to the status of the file, only that she is not yet capable of going before the Board and obtaining approval from the Town to build. Her communication is helpful to the Board but does not answer any questions in terms of updates or answers to moving the application forward. The fact that the public hearing was opened and closed is the most meaningful factor to focus on and what we need to do, particularly in light of moving the date from October 4, 2016 to October 11, 2016, which would be beyond the 62 days in which a decision needs to be rendered, and an action should be taken this evening by the ZBA. In terms of request for information and applicant's delaying in providing that information, the public hearing opened and closed, Counsel Molnar recommended to the Board to take action on the application at present. Then, if that action is a denial because of the lack of information to make an informed decision, then the Board should communicate that to the applicant that the variance has been denied at present given that length of time between publication and hearing and closure. It is not with prejudice, when the time is right, the applicant could re-apply for the same variances or something different. A new application can and should be invited from the applicant when the time is correct for her. A denial of the variances right now, if that is the Board's will, would be without prejudice with the applicant bringing in another application in the future.

Member Coville inquired that although he is new to the Town zoning board, he is familiar with the Village zoning board and if you deny the application now, does she have to show substantial changes to her application when she submits in the future? Counsel Molnar stated that the

applicant could resubmit the exact same application and you would probably have the exact same requests for information to clarify the application. She would need to provide responses to the inquiries on the existing application. Member Condon stated that she would then need to re-apply and pay the fee if she were to come back in front of the Board if we denied it. Member Palen inquired if the reasons would need to be given and if the Board goes through the criteria if the application is denied. Counsel Molnar commented that the Board would have to do the appropriate review, complete the review and articulate why the denial if it is a subject of a motion. If we had the applicant present, the Board could achieve a result that is in between and extends the time by having the applicant volunteer to extend the 62 days to something longer in exchange for submission of new materials or otherwise getting a better handle on or presenting the application. We have had several instances where the applicants will volunteer that the Board need not make a decision between the close of the public hearing and the 62 day limit in order to manage additional information that may or may not be required before a decision must be rendered.

Member Coville inquired that as far as the abandonment law goes, there was talk regarding the substance of how communication goes. She sent an email saying nothing regarding the application, is that substantial enough to prevent us from declaring the application abandoned. Counsel Molnar commented that that issue is a moot point. The focus should be on the 62 days from the close of the public hearing and how we best manage that for both the Board and the applicant. Member Palen commented that the Board is not to consider abandonment as that is not the issue. Chair Rhoads stated that the Board has reached the time frame on this application to make a decision. Member Condon commented that it would automatically be approved otherwise. Counsel Molnar stated that the Board has received some form of communication that clarifies where she is. She is not presently ready and she may be hopefully in the future; that is an important piece that the Board should set aside for a moment and focus on the variances requested that would be approved by default unless the Board acts within its 62 day window. The Board can review, approve or deny, but it needs to complete its process.

The SEQR determination that this application is a Type II action not subject to further SEQR review was completed on February 2, 2016.

At this time Counsel Molnar reviewed with the Board the statutory criteria set forth in Town Code Section 148-45D (a-e) for an Area Variance. Counsel stated that in making their determination the Zoning Board of Appeals is required to consider certain factors, which are:

- 1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties:** No. The granting of an area variance would not result in an undesirable change to the character of the neighborhood as the site next door contains a year round residence of a similar size. Many dwellings in the neighborhood have been recently updated and are occupied year round. However, the subject site has many physical challenges including significant slopes, active watercourse, and utility easement. Improving the site to the extent proposed may increase runoff and pose a detriment to neighboring properties and the lake.

2. **Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance:** Yes. The applicant could decrease the size and position of the new residence. There are many compelling factors that speak to a change in design. Reducing the size to the allowable square footage would eliminate the need for that particular requested variance. Building a smaller structure might also allow for increases in setback distances, and greater consideration for construction on slopes closer to 30%. It might also allow for a greater setback from the watercourse. Because of all of the negative features of the building lot, above and below ground utility lines, right of ways, watercourse, and steep slopes, the lot is more amendable to construction of a seasonal structure rather than a year round residence. It was requested of the applicant to determine if the easement is still valid and in use as the structure could be relocated further back if the easement was removed. The owner desires a year round residence of 2,843SF; but has not addressed or considered changes to the plan which would mitigate the listed issues which exist in the application as submitted to the ZBA.
  
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:** Yes. Due to the physical condition of the site, there are several variances required to construct the dwelling including watercourse setback, lake yard setback, building footprint and steep slopes exceeding 30%. The number of variances that are required for this plan would tend to indicate that the proposed plan may not be best suited for this particular site. The plan is requesting four variances for a nonconforming lot of 0.59 acres. Each one of the requested variances are substantial on its own right and taken as a whole they are dramatically substantial.
  
4. **Would the variance have an adverse impact on the physical or environmental condition in the neighborhood; 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 environmental impact because of the cumulative risk of degradation of the lake posed by granting individual variances. This presumption is rebuttable:** Yes. The property has a steep slope and is densely vegetated with mature trees. Excavation of the site may cause a threat to the lake as water may run off and erosion may be increased by the proposed improvements. The watercourse on the south side is more active than what had been detailed on the drawings and there is a large amount of runoff from the farm above that goes into the watercourse. The section regarding steep slopes, 148-30B, prohibits disturbance including cutting of vegetation or installation of a driveway on any slope that is 30% or greater, and the Applicant's proposal does not meet any of the criteria for exceptions to this code section.
  
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, does not lie in favor of the applicant. The decision is based upon all of the evidence in the record as well as Board site visits to the property, and the Board's deliberation of the questions presented above, after which a motion was made by Denise Rhoads and seconded by Jim Condon, that the application be disapproved. The Board being polled voted in agreement of the motion for the application to be denied.

<u><b>Record of Vote</b></u>			
Chair	Denise Rhoads	Present	[Yes]
Vice Chair	Jim Condon	Present	[Yes]
Member	Sherill Ketchum	Present	[Yes]
Member	David Palen	Present	[Yes]
Member	Curt Coville	Present	[Yes]

Mr. Eggleston inquired if the application is denied without prejudice. Counsel Molnar stated that it was his recommendation. Mr. Eggleston inquired if that could be added to the motion that it is denied without prejudice. Chair Rhoads inquired if it was necessary. Counsel Molnar commented that it is not necessary. Mr. Eggleston stated that his understanding of state law is that you cannot bring back an application that has not substantially changed; whatever the term substantially changed is defined as, without a unanimous vote of the Board to rehear the public hearing and then a unanimous approval. It would be a much higher standard of burden than the simple majority. Counsel Molnar stated that if the Board is inclined to also include without prejudice because in large part the decision this evening is based upon a lack of information and a lack of responses to certain and specific questions. I have no objection to the Board including that as an additional criteria or an element of the denial as a denial without prejudice to allow re-applying at a time when an applicant is better able to provide information to the Board as and when requested. The applicant could re-apply with the same information, collect the same feedback from the Board and then proceed to respond to that feedback including what may or may not be suggested for alterations and the like. Member Condon commented that Bob stated that the only way they could come back is if they change the plan. Mr. Eggleston stated that the word is substantial or significant change which is a very grey area and subject to interpretation. Member Condon commented that if they had four variances and they come back with three that would be substantial. Member Palen commented that the applicant would receive a copy of the denial and understand why it was denied for very specific reasons, and if she came back with the exact same plan it would be denied. Mr. Eggleston stated that the same application was approved by a previous board and at a previous time with aggressive representation, and it was her choice not to have aggressive representation to explain the rationale behind the variances. He continued stating that time has changed, board members have changed, attitudes have changed and the pendulum has swung back and forth. Member Palen stated that the owner could have built the house after receiving that approval however chose not to.

Mr. Eggleston commented that his concern is what State law says. Member Condon inquired if State law supersedes Town law. Counsel recommended that all legal questions be discussed in an attorney advice session, but for all intensive purposes the board is facing approval of the

application by default if the Board does not act. Chair Rhoads stated that the motion has occurred, seconded, and with a vote to deny the application. Counsel Molnar stated that right now the Board is considering, which is not unreasonable, to say to this applicant in large part that the reason the application was denied was because of a lack of substantial information in response to important questions. An additional provision could be added to the denying resolution that indicates that the application is denied without prejudice to the applicant bringing in an application in the future and additional information in response to the inquiries and requests to the Board. Chair Rhoads stated that she would like the motion she made to stay as if she came back with the same plan it would achieve the same conclusion. Member Coville inquired if it would be denied automatically or if the Board would work with the applicant to reduce the number of variances requested. Member Condon stated that it would have to come back with substantial changes. Chair Rhoads stated that this application has been pending with the same status for a year. Member Condon stated that the applicant should be aware that the application has been denied and wouldn't pass if the applicant came back with the same criteria. Member Coville stated that he would like for the application to be without prejudice because of the discussion prior to the motion, and asked the question of denying the application versus abandonment. He continued stating he does not like the idea of not allowing the applicant to come back and allow us to work with the plan. Member Condon stated that he did not agree for the Board to consider abandonment. Member Palen stated that the Board is not considering abandonment. Member Coville stated he is asking the question about substantial changes. Member Palen commented that in order for it to pass there would have to be substantial changes.

Member Coville commented that when he was on the Village Zoning Board, an application was presented to the ZBA twice, the second time three years later, and it was denied so the Board never got to work with the applicant to make the modifications. The applicant built it to the zoning code and the Village ZBA could have assisted in making it better. Mr. Eggleston stated that instead of building a Village appropriate house they built anything small enough to meet all of the criteria. Member Palen commented that she could do the same thing. Member Ketchum commented that the Board had asked her to consider building it on stilts, consider a smaller home and consider moving it. Chair Rhoads stated that the motion has already been made and voted on, and if someone wants to make a motion for the addendum, the Board could vote on it.

**WHEREFORE** a motion was made by Chair Rhoads and seconded by Member Condon to not revise the prior motion and allow the denial motion to stand. The Board having been polled resulted in affirmation of said motion.

<b><u>Record of Vote</u></b>			
Chair	Denise Rhoads	Present	[Yes]
Vice Chair	Jim Condon	Present	[Yes]
Member	Sherill Ketchum	Present	[Yes]
Member	David Palen	Present	[Yes]
Member	Curt Coville	Present	[No]

**Discussion**

Supervisor Lanning discussed with the Board the proposed improvements to the Sims restroom facility at Austin Park. The Board had suggested the elimination of the center hall and possibly relocating the access to the bathrooms from the exterior of the building. Also suggested was the use of brick on the facade to coordinate with the recently constructed dugouts.

**Discussion**

The Zoning Board of Appeals discussed developing detailed notes regarding sections of code that have been problematic that the Board would like to have addressed. The Zoning Board will consider conducting a work session at next month's regularly scheduled meeting to discuss zoning issues.

**Discussion**

The eastern gateway committee has been appointed to develop a master plan for the gateway.

**Discussion**

Member Condon stated that the water line on Highland Avenue is in need of repair.

There being no further business, a motion was made by Member Condon and seconded by Member Palen to adjourn the meeting. The Zoning Board of Appeals meeting adjourned at 8:15 p.m.

Respectfully Submitted,  
Karen Barkdull