

**TOWN OF SKANEATELES
ZONING BOARD OF APPEALS
MEETING MINUTES OF
September 7, 2021**

Present:

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

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 October 12, 2021, at 7:00 p.m.

Minutes

Previous distribution to the Board of the regular meeting minutes of August 3, 2021, was executed and all members present acknowledged receipt of those minutes.

WHEREFORE, a motion was made by Vice Chair Palen and seconded by Member Kiefer to accept the August 3, 2021, minutes as presented. The Board having been polled resulted in (4-0) affirmation of said motion, Member Ketchum abstained due to her absence at the August meeting.

Record of Vote

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

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

Public Hearing

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

Present: Chris Malinowski, Owners

Chair Rhoads described the proposal is for the construction of a new two-story single-family dwelling with deck and a pole barn requiring variances for federal wetland setbacks, and front yard setback to a town road for the barn. A site visit was conducted by the Board August 7th, reviewing the staked-out areas indicating where the home and barn would be located. Revisions to the original proposal were submitted as a result of the site visit and setbacks to the wetlands were reduced. An updated site plan was submitted to the Board by Mr. Malinowski, as well as a revised Denial Letter from Clerk Barkdull. Christopher Malinowski, Owner, explained the house was moved slightly to the west while maintaining the front yard

setback to the town road. This allowed for a 5-foot reduction in the variances requested for the federal wetland setbacks to the house and deck. Mr. Malinowski stated he moved the pole barn closer to the road per the request of the ZBA in an effort to reduce the variance required for the wetland setback. Grading contours were added to the revised site plan as requested by the ZBA.

Chair Rhoads reviewed the proposed dwelling requiring a wetland setback variance for 86.2 feet to the dwelling and a setback of 74.3 feet to the attached deck, where 100 feet is required. These setbacks have been reduced from the original request approximately 5 feet due to the westward shift in location and reduction in floor plan size. Chair Rhoads sought confirmation that there are no Federal regulations on Federal wetlands, however the DEC has a 100-foot setback requirement on a NYSDEC wetland. Mr. Malinowski stated that is correct, the 100-foot requirement is that of the Town of Skaneateles. Chair Rhoads stated this was noted by the Onondaga County Planning Association in their review of the plans. Chair Rhoads then asked what the neighboring Kelsey-Davey Farm was, as it is on the U.S. National Register of Historic Places. She noted the proposal does not look like anything that would impact the neighboring Historic property. Clerk Barkdull confirmed the Kelsey-Davey Farm is in fact a Historical site in the Town of Skaneateles. Counsel Molnar clarified the mention of the Kelsey-Davey Farm in the SOCPA Resolution as a Historical site was written as a comment and not an objection where they would be encouraging the Town to create conditions which would require compliance by the Applicant. Therefore, in reference to the farm there is no action required of the ZBA. Clerk Barkdull provided a map from the Town's Open Space Plan as reference to indicate where the Kelsey-Davey Farm is located in proximity to the Malinowski property.

Chair Rhoads reviewed the proposed pole barn requiring a variance for wetland setback. She stated it has been moved closer to the road based on the suggestions of some Board members to create a larger distance to the wetland and place the barn where there would be flatter topography and less driveway costs. Chair Rhoads asked Mr. Malinowski what the time frame for the construction of the barn is as it was said construction on the barn would not begin until well after the house was built. Mr. Malinowski stated it looked like the barn construction would not begin until 2023 and was aware an extension request for the variance if granted would be required. Clerk Barkdull broke down the expiration timeline, variance is valid for 12 months, building permit is valid for an additional 18 months, then a 6-month extension could be issued for the building permit allowing approximately 3 years to complete the project. Chair Rhoads asked for verification the barn would be built within that 3-year timeframe. Mr. Malinowski stated yes. Vice Chair Palen suggested removing the pole barn from this application and making a separate application for it in the future. Mr. Malinowski understood and felt this would be the most efficient way to request all the variances needed for the property.

Member Ketchum asked about the position of the house on the land, is this specific angle proposed because of the excavation for the foundation that it couldn't be turned to face the road more and pull it away from the wetland. Mr. Malinowski stated no, it was primarily to gain a larger front yard so children can utilize the front yard more safely and they wouldn't be as close to traffic on the road.

Member Lee stated there is 10 feet of elevation difference from the roadside of the barn to the rear of the barn even with the revised location closer to the road. Moving the barn closer to the road helps reduce some of the cost and increases the distance to the wetland but it hasn't solved all of the issues. Because it would require fill to create a level area for the barn there is potential for that fill to make its way into the nearby streambed. Mr. Malinowski stated the pole barn has been moved slightly west, further from the stream for that reason, with the distance reflected on the updated site plan. The newly proposed location requires less fill than location that was proposed initially. Chair Rhoads acknowledged it is a difficult property and re-visited the site following a rain, she observed a small amount of water collected in the area that is indicated as a stream on the site plan, primarily on the property across the street with no flowing water. She noted the stream had been described as seasonal and stated the Town Code does not

define seasonal waterways. Member Ketchum asked if there was any obvious erosion from the dramatic rains that had occurred a couple of weeks prior. Chair Rhoads stated no, possibly one small section across the street where the neighbor has the stream lined with stone. Mr. Malinowski reminded the Board he would reinforce the stream bed with stone and vegetation to aid in water runoff.

Member Kiefer asked if the Applicant had considered moving the pole barn further west outside of the 100-foot buffer. Mr. Malinowski explained he didn't know if he would be able to move the barn that close to the house and would have no issue moving the barn closer to the house if that is what is being suggested. He noted it is both further from the stream and flatter if the barn were to be moved closer to the house. Chair Rhoads asked if the Applicant would have to apply for a new driveway permit if the barn were to be moved closer to the house. Mr. Malinowski stated yes, but he would need one for the currently proposed location anyway, the existing driveway that was approved by Highway Superintendent Wellington is intended for entrance to the house. Member Ketchum noted moving the barn closer to the house would require tree removal, where the current proposal is located in an open area. Member Kiefer stated by moving the pole barn closer to the house it would minimize the number of required variances and removal of the trees wouldn't be an issue since the Applicant's intention was to replace them with a riparian buffer. Member Ketchum brought awareness to a utility pole located in the area closer to the house, that would require additional setbacks. Mr. Malinowski was open to moving the pole barn closer to the house with an appropriate setback to the existing utility pole. Member Kiefer reiterated the importance of the ZBA granting the minimal variance requested and moving the pole barn west toward the house would accomplish that.

Chair Rhoads asked Counsel Molnar if it would be possible to review the variances the Applicant has requested separately. Counsel stated with the consent of the Applicant that could be managed, however he recommended it would be best to review all variances collectively at this time. The Board discussed the various options for reviewing the variances with the Applicant, as well as alternate house and pole barn locations on the property. It was decided by the Applicant to withdraw the proposed pole barn from the application and allow the ZBA to move forward with reviewing the required variances for the proposed dwelling at this time. Member Lee noted it may be to Mr. Malinowski's advantage to see how the lot develops after the house is built as the Applicant may see the lot differently. Counsel Molnar recommended the ZBA move forward with the review of the requested area variances solely for the proposed dwelling 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 site visit was conducted of the property.

WHEREFORE, a motion was made by Member Ketchum and seconded by Vice Chair Palen 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.

Letters in support of the proposed project were received from neighbors Alan & Lisa Steven, 1660 Van Camp Rd., Danielle Spain, 4393 Chapman Rd., and Brooke Ryan, 1691 Van Camp Rd.

WHEREFORE, a motion was made by Member Kiefer and seconded by Vice Chair Palen 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 two area variances

simultaneously concerning the applicable section of Town Zoning Code: Section 148-5-4-I.4 – Wetland and Watercourse Setbacks. 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. The construction of a new single-family dwelling on this lot will not produce an undesirable change in the character of the neighborhood. The lot was subdivided with the intent for a residential building lot and purchased by the Applicant for construction of a new home. It is located in an area with single-family homes, most having garage and/or shed buildings. The neighbors have indicated support for the Applicant constructing the dwelling submitting letters to the Zoning Board of Appeals.

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, by majority vote. The particular benefit sought by the Applicant can be achieved without an area variance as the construction of the dwelling could take place in the building envelope created by the Town of Skaneateles on the lot at the time of the subdivision from the neighboring property in 2020. If the house were angled slightly, it could potentially alleviate the need for the area variance required for the house minimizing the current request. These alternatives were discussed between the Zoning Board of Appeals and the Applicant, and the original proposal has been revised to come to a compromise, based on the Applicant’s desire to be set back further from the road for safety reasons for their children and the proximity to the driveway on the flat area of the lot, which allows easy access to the garage and home. It is reasonable to grant some relief of the setback to the wetland as the intent of the buffer is to protect the wetland, the reality is the elevation of the buffer is at least a 30-foot drop to a gully below, so it is more of a line on a map than an actual wetland. Due to the shape of the lot and buildable area, there are few alternatives available for placement of a home. The setback required for the wetland further limits a site which is compromised by shape and topography. It is also noted that there are no Federal wetland restrictions on building setbacks, it is the Town Zoning Code which requires a 100-foot setback.

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 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member SHERILL KETCHUM	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. **Whether the requested variance is substantial:** No. The request for area variance for the deck and house are not substantial the Applicant has reduced the variances from what was initially requested moving the structures further away from the Federal wetland. The elevation to the wetland is such that there is quite a sloping distance from the edge of the home to the watercourse, it is a densely wooded area. The Applicant intends to maintain wooded areas with the installation of a riparian buffer along the front of the lot to aid in water retention and runoff, with additional plantings and trees on the property to further protect the wetland. Due to the topography of the lot, it does not appear there will be any runoff impacting neighboring properties as a result of the

construction of the dwelling.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district: No. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district due to the topography of the site and location of the proposed dwelling. Considering the slope to the actual watercourse/wetland area, the riparian buffer the Applicant intends to build retaining trees/woodland area and adding new trees/plantings would improve the existing conditions on this site and the neighboring properties. Where the structure will be placed, the water appears to drain toward the wooded area on the rear of the property, although it is a designated Federal wetland it does not appear to be all that wet. The surrounding trees are in good condition. A riparian buffer along the road line, as well as between the house and the wetland area for mitigation of potential runoff has been offered by the Applicant. There are existing drainage ditches along the proposed front roadside of the property as well as the easterly edge of the buildable property to mitigate any runoff issues. Ultimately the encroachment on the wetland will have no negative effect on the wetland.

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 Palen, 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. The Applicant submit an updated site plan/survey to the ZBA reflecting the removal of a previously proposed pole barn, from Licensed Surveyor, Paul Olszewski (the "Updated Site Plan"), and that the Applicant comply therewith when constructing the single-family residence with attached garage and deck on the property; and
2. That the Applicant submit a construction sequence to be reviewed by the ZBA Chair for

- approval, and to be complied with in all respects; and
3. The Applicant utilize a silt fence to protect the wetland area during the construction process; and
 4. The Applicant submit an As-Built survey verifying the structure is in compliance with the variances granted as well as the Updated Site Plan.

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 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other Board Business

Planning and Zoning Meeting

Chair Rhoads reminded the Board of the P&Z meeting scheduled for Wednesday, September 8th at 6:30pm.

Cannabis Informational Meeting Update

Chair Rhoads updated the ZBA the Town Board hosted the Informational Meeting regarding the Marijuana Regulation and Taxation Act on August 24th.

Upcoming Review

Chair Rhoads stated there are no site visits scheduled before the October meeting, as there are currently no new applications in front of the Board.

Local Law D of 2021

Clerk Benda informed the ZBA the Town Board had placed Introductory Local Law D of 2021 “Proposed Amendments to Town Zoning Code §148-8-9” on the agenda for the upcoming Town Board meeting as a result of the ZBA’s recommendation to amend this section of the Code.

There being no further Board business, a motion was made by Member Ketchum and seconded by Vice Chair Palen to adjourn the meeting. The Zoning Board of Appeals meeting adjourned at 8:20 pm.

Respectfully Submitted,
Kim Benda