

# Zoning Board of Appeals October 19, 2021 Minutes

Quick links to applications within these minutes:

- [Z2021-07 Franz](#)

Chair Douglas Purcell opened the public hearing at 7:30pm.

Members of the public in attendance: Christian Soller, Brian Franz, Kristin Franz, Code Officer Jennifer DeRocker-Blowers.

Chair Douglas Purcell announced that for the ease in publishing the minutes for tonight's meeting, this session is being recorded. He then asked for a roll call.

Chair Douglas Purcell: Present.

Frank Malagisi: Present.

Kathleen Ellerby: Present.

John Byrnes: Present.

Kenneth Coirin: Present.

Quorum was established.

Chair Douglas Purcell said the meeting minutes of the September 7, 2021 meeting were published to the web previously. He said he had reviewed them. He asked if there were any other changes or corrections to the minutes. He said that, hearing none and seeing none, he moved to waive the reading of the minutes and accept the minutes as published as final.

John Byrnes seconded the motion.

All were in favor. None were opposed.

Chair Douglas Purcell said the meeting would be the reopening of application [Z2021-07](#) by Brian Franz for a property at 272 Sand Point Road and identified as [SBL#52.19-1-7](#). The applicant proposes to demolish the existing structure having a 1520 square foot footprint and replace it with a 1779 square foot footprint structure. He said both existing and proposed structures are within the 75 shoreline setback. He said the applicant is seeking relief for shoreline setback. He said that additionally there is an increase in bulk within the shoreline setback. He said further action on this application was tabled at the September 7, 2021 meeting when the ZBA determined that the application incomplete. He said that since that meeting, the applicant has provided the additional information requested. He said this meeting will be a two-part Hearing: the open session and the closed session. He said that during the open session, the board would first hear from the applicant, then entertain any additional comments from the public and hear any correspondence. He reminded those present to speak to the board during the open session and during that open session, the board will refrain from asking questions because those will be covered during the closed session. He said once all parties have had an opportunity to speak concerning the application, the board will go into closed session. He asked the applicants if they had anything further to add in terms of description or justification for the proposed project.

Brian Franz asked if it was just addition to what was already stated.

Chair Douglas Purcell said yes, the September 7, 2021 minutes are already on the record. He said those minutes would be part of the package that goes to the Adirondack Park Agency, if the

application is approved. He said he is not asking the applicants to repeat anything.

Brian Franz said he had nothing to add.

Kristin Franz asked the board if it needed a refresher or was the board up-to-speed on the application.

The board did not ask for a refresher.

Chair Douglas Purcell noted that there was nobody else in the audience other than the applicants. He asked the Clerk if there was any additional correspondence.

Clerk said there was no additional correspondence.

Chair Douglas Purcell said that he would close the open session and go into closed session to discuss the application.

Open session ended at 7:35 pm.

Chair Douglas Purcell solicited questions from the ZBA members, since the additional application information has been submitted. He started by asking Kathleen Ellerby if she had any questions.

Kathleen Ellerby said she was wondering about whether the proposed house was the same height as the current house.

Brian Franz said no.

Chair Douglas Purcell said it looked like the existing structure was about two to three feet lower in height than the proposed structure.

Brian Franz said correct.

Chair Douglas Purcell said to Kathleen Ellerby that it was marked with a dotted line on the submitted drawing.

Kathleen Ellerby said okay.

Chair Douglas Purcell asked Kathleen Ellerby if there was anything else.

Kathleen Ellerby said that was it.

Chair Douglas Purcell asked Frank Malagisi if he had any questions.

Frank Malagisi asked if the footpath went in front of the property.

Brian Franz said it can, but generally people go behind.

Frank Malagisi asked if the footpath would be maintained so people can get through the property.

Brian Franz said absolutely.

Kristin Franz said absolutely.

Frank Malagisi said the path seems to stop at the property next door. He said he had been through the property a couple times going [to a previous applicant's property on South Shore Trail]. He said he was a little uncomfortable going in the back.

Brian Franz said he was planning to move the path behind the house as well, back another eight feet.

Brian Franz asked if the trouble Frank Malagisi had traversing was with the property to the west or the applicant's camp.

Frank Malagisi said it was the applicant's camp. He said he had gone both ways, in front of the camp and behind the camp.

Brian Franz said that since they were kids, they all went along the line of windows.

Frank Malagisi said that when one doesn't own the property it felt like one was doing something...

Brian Franz said, yes, you can see right in the house.

Kristin Franz said that on some of the properties on South Shore Trail, one goes right up on the owner's steps.

Frank Malagisi asked about maintaining the eight feet.

Kristin Franz said absolutely.

Brian Franz said it was important to them.

Kristin Franz said it was important because the father's camp is on the right and the mother's camp is two camps down on the left, so it is important.

Frank Malagisi said if the litigation had been solved concerning the borderline discrepancy.

Brian Franz said they are in the process.

Kristin Franz said that property line issue doesn't affect the building, regardless of where the property line is determined to be.

Frank Malagisi asked about the orange line.

Applicants approached the board to point to specific features of the drawing.

Brian Franz said green line is in dispute.

Chair Douglas Purcell asked for confirmation that it was the green line that was in dispute.

Brian Franz confirmed it was the green line.

Chair Douglas Purcell asked if that was were the other line is.

Brian Franz pointed to what he called the original survey line. He said they had it resurveyed and he pointed to the new survey line.

All board members were viewing the survey at this point.

All board members said okay.

Brian Franz pointed to the area in dispute on the drawing. He said that in the worst case scenario where the other party wins the argument, the line moves to where he pointed.

Kathleen Ellerby said that doesn't change the setback.

Chair Douglas Purcell said that was one of the questions he had.

Kenneth Coirin said that was his question as well.

Chair Douglas Purcell said it was a lot easier to see in color.

Clerk said he delivered color drawings to every member.

Brian Franz said he delivered the drawings to the Code Office.

Clerk said he delivered the drawings to the board members by driving around to each member's home.

Kenneth Coirin said the Clerk was the board's own version of FedEx.

Frank Malagisi said that in the front of the camp, going toward the water, he said it seemed like there was a bulge where the porch is. He asked if there was a pier issue.

Brian Franz said the whole camp is trying to fall into the lake.

He said he didn't want to open it because he didn't want to then own the camp.

[laughter]

Brian Franz said it is concave in the back and convex in the front.

Frank Malagisi asked what would be done differently.

Brian Franks asked if Frank Malagisi was asking what was being done to mitigate the bulge.

Frank Malagisi said yes.

Brian Franz said that was one of the reasons they were tearing the camp down: to put in a basement.

Frank Malagisi asked if it would be a full basement.

Brian Franz said that was the plan but they would not know until they actually demolished the camp and get in there and start digging around. He said it could be...

Frank Malagisi said on a rock ledge.

Kenneth Coirin said it could be boulders.

Brian Franz said they probably will have a few boulders. He said if you look at the rest of the site, there are rocks everywhere.

Kenneth Coirin said yes.

John Byrnes asked if all goes well, is the applicant planning to remove the retention wall [at the shoreline].

Brian Franz said they would replace it. He said it was kind of a sea wall that he rebuilt years ago and was already starting to...

Kristin Franz said they would have a landscape architect help them, so it will look nice. She said that was important since John Byrnes would have to look at it.

Frank Malagisi said he had nothing further.

Kenneth Coirin agreed, saying the board had pretty much covered every question he had.

John Byrnes said maintaining path had been his only question.

Chair Douglas Purcell said he would be asking a series of questions that may appear stupid, but the applicants need to keep in mind that if the application is approved and then referred to the Adirondack Park Agency, the Adirondack Park Agency will be looking at a piece of paper and asking themselves these questions, so he was going to ask questions as if he had never seen the applicant's property. He said the first question he had is the applicant has an acre of land available and thus, it would seem to him that there would be available alternatives for the location of the proposed camp, possibly still without even exceeding the coverage limit of 10% and all outside the 75 foot setback from the lake. He said his question is: were there any other locations on the property given consideration as possibilities for the rebuild and if not, why not.

Brian Franz said theoretically yes, they could move the house 75 feet back from the lake, however, they are on the side of a mountain. He said there is fairly significant terrain. He said not



only would it look awful from the lake because all the rest of the houses are right there along the shoreline and the applicant would have their house halfway up the hill. He said it also detaches the house from the boathouse, which is part of the living space — it is outdoor living space where the applicant spends much time.

Chair Douglas Purcell asked about putting the house up on the hill next to the garage and instead of having it be a full-sized camp at the lake, either be something like a bathhouse attached to the boathouse — something like that.

Kristin Franz said they loved their location. She said she would love to live there year-around. She said she thought they had the right to build on the property [footprint] that they have. She said they would like to replace the house where it presently is. She said there were huge boulders in the back of the house. She said she didn't even think those boulders could come down, unless one had unlimited funds to change the topography. She said she thought it would look terrible.

Brian Franz said it that mostly it was the terrain. He said that were it not for the terrain, they could probably easily move it back and it wouldn't be an eyesore. He said that moving 75 foot diagonally — the hypotenuse — would be an eyesore.

Chair Douglas Purcell said the other concerns that he has are the magnitude of the variance request. He said that while the proposed structure was no nearer to the lake, the requested variance is a 67 foot variance out of the 75 foot setback. He said that was 89% of the allowed setback. He said he recognizes the fact that the applicant is trying to put it in the same spot. He said his next concern becomes the increase in coverage. He said the footprint itself is a 12% increase inside the 75 foot shoreline setback. He said he calculated that by taking the 3184 square feet of coverage

the applicant currently has, based on calculations by the Code Enforcement Officer [[see worksheet](#)] and subtracted all the square footage that is outside the 75 foot setback — the garage and the outhouse — yielding 2156 square feet. He said the applicant was proposing to increase the footprint by another 259 square feet. He said the majority of the increase was in the rear of the property using the eight foot depth in the back. He asked if this would require some excavation in the area that the applicant is already expecting some concerns about excavating.

Brian Franz said “clearly, yes”.

Chair Douglas Purcell said especially if the applicant was going to maintain the path in the back.

Brian Franz said correct.

Chair Douglas Purcell said the bulk increase, by his calculations, is a 65% increase of the bulk inside the 75 foot shoreline setback. He said the majority of this 65% increase is the 565 square feet along the back of the building, which is essentially 26 feet high. He said there was some additional in the porch — about one hundred square feet in the porch. He said he had just heard something in the discussion that he didn’t take into account in the calculations: if the applicant puts in a basement — he had assumed the applicant wasn’t doing much excavating. He said if the applicant is putting in a basement, the applicant is increasing it even more. He said that 65% was a pretty significant increase in bulk within the shoreline setback. He said he was surprised that none of his colleagues asked the following question. He asked the applicant if they had given any consideration to increasing the bulk, utilizing the existing footprint of the existing wood deck, as the place to put the additional inside space or a full second story instead of a story and a half. He said that way the applicant would

increase the living space without increasing the footprint within the shoreline setback.

Brian Franz said the proposal actually is a full second story.

Chair Douglas Purcell said he understood that, but he was suggesting staying within the existing footprint and making it all a full second story.

Frank Malagisi asked if that would interfere with the height restriction.

Chair Douglas Purcell said no.

Brian Franz said what they would lose — and they are very cognizant that they are within the 75 foot setback and that the existing structure is sitting right front and center on the lake shoreline. He said they were trying to do is to make more of a three-season, if not a four-season, giving the ability to age in place plan. He said that necessitated both a bedroom and a bathroom downstairs. He said the existing floor plan did not yield itself easily to putting another bedroom downstairs. He said that in doing so, that is what necessitated bumping out the eight feet back. He said that in addition, he wanted an entry space. He said he did not prefer walking right into the kitchen. He said that also increased some of that bulk. He said he took into consideration the design of other camps on Canada Lake and up to Lake Placid and Saranac. He said they choose similar design features. He said the bulk is not in the front [shoreline] or either side. He said it is in the back, not blocking anyone's view. He said this was the most unobtrusive way to have a bedroom and bathroom downstairs and have a bathroom upstairs. He said that from a cost standpoint, it is cheaper to build a two story than a 1.5 story, because of the roof lines and just one load-bearing wall. He said that's why they came

up with this design: they thought it was the best option, both aesthetically and cost. He said this would give the most bang for the buck and the least impact, because what he is proposing won't really be seen from the lake.

Chair Douglas Purcell said understood. He said the other issue deals with the property line issue. He said that with the original application and the original design and the lot line that is indicated in green, which is the existing one, the applicant's side yard setback is met. If the side yard line comes in, as shown on the most recent drawings, the applicant is 4.5 feet away from the setback. He said that at that point, the applicant would end up with a side yard setback variance request of 8.7 feet of the allowed 13.3 feet. He said that if the applicant is not successful in maintaining the existing lot line, the applicant would be using about 65% setback — 4.5 feet is pretty narrow.

Brian Franz said indeed, that's how they built back then.

Chair Douglas Purcell said he heard the applicant. He said those are the concerns he has as he did the review.

Frank Malagisi asked about the pre-existing septic and what is going to be different.

Brian Franz said they would have to put in a new septic to code. He said what they had now is the original Sears Roebuck 1929 tank in that 4.5 foot setback. He said that clearly they could not keep that. He said there will be a new system, engineered.

Frank Malagisi asked if it would go to the rear.

Brian Franz said yes, it would have to be pumped up the hill.

Kenneth Coirin said up on top.

Frank Malagisi said so that's the plan, pump up.

Brian Franz said it was his understanding that there would be a tank down below and it would be pumped up to a field by the garage. He said there is an area up there that they've had an engineer look at as being the best spot.

Chair Douglas Purcell said that was going to require some excavation on that hill as well.

Brian Franz said yes.

Kathleen Ellerby asked if it was setting on piers.

Brian Franz said yes.

Kathleen Ellerby asked about putting in a slab instead of a basement.

Brian Franz said that ideally, they would like to have a basement so the utilities could be put in there and heat it.

Chair Douglas Purcell said that makes it easier to go from three season to four season.

Brian Franz agreed and said it was less likely to move around. He said that depending on what they find, excavating, it could be a slab or they may have to pin it to the ledge rock. He said they would not know until they get into it. He said that ideally they would like to have a full basement as storage space if nothing else.

Chair Douglas Purcell asked if any other board member had any questions.

No board member had any further questions.

Chair Douglas Purcell asked if all board members had seen the Short Environmental Assessment Form so that the board could do its SEQR determination.

All board members had reviewed it.

Chair Douglas Purcell said that based on his review, he believes the SEQR determination would fall into a Type II action and he quoted from [N.Y. Comp. Codes R. & Regs. tit. 6 § 617.5\(c\)\(9\)](#):

construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;

Chair Douglas Purcell said this would mean a negative SEQR determination. He asked the board if they agreed with his negative declaration.

All board members were in agreement.

Chair Douglas Purcell said there being no additional questions or comments and with a no significant adverse determination by the Zoning Board of Appeals during the SEQR review, the Board will review the criteria for an area variance. He read from the [Zoning Ordinance Article 11, § II\(3\)\(a\)\(2\)\(ii\)](#).

In making its determination, on an area variance application the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and

welfare of the neighborhood or community by such grant.  
In making such determination the ZBA shall also consider:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

All board members said no.

Chair Douglas Purcell agreed. He said that by going toward the rear the applicant is doing everything possible to make it nice for the community and nice for the neighbors.

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;

All board members said no.

Chair Douglas Purcell said that during the discussion, the applicant has expressed why it is not feasible to put it somewhere else on the property and the only thing that they could do which would not require an area variance would be to build the exact same size camp — same height — and make no increase in the bulk and the board understands why the applicant wants to increase the bulk.

3. Whether the requested area variance is substantial;

Kenneth Coirin said yes.

Frank Malagisi said yes.

Kathleen Ellerby said yes.

John Byrnes said he thought it was subjective. He said it was moving toward substantial but he didn't have any previous numbers to look at. He said the ZBA had not really taken into account bulk before.

Chair Douglas Purcell said it was the first time the board had gone through the trouble of calculating for bulk.

John Byrnes said, so it is tough to answer that question.

Chair Douglas Purcell agreed that it was tough. He said he clearly had concerns, particularly when he also hears that the applicant wants to put in a basement. He said he understood why the applicant wants to put in a basement. He said it was already a 65% increase in bulk with what the applicant is proposing and that is without taking into account a basement. He said that with the basement, it would be a rather substantial increase in bulk. He said he understood the point John Byrnes made that the ZBA had never really taken bulk into consideration, but that was "shame on us". He said he thought all members thought it was substantial, even the proximity to the lake. He said if the side yard setback ends up being moved [as a result of ongoing litigation] that would be really substantial too. He reminded the board that the board members were allowed to disagree with one another.

[laughter]

John Byrnes said that in the future, the ZBA needs to hammer those numbers out.



Chair Douglas Purcell said he always gets uncomfortable whenever it starts to get over 50%: 50% of taking a side yard setback, 50% of a front yard setback. He said any increase over 50% he starts getting nervous. He said that it doesn't mean he hasn't granted any of those, but that is where his line is.

Kenneth Coirin said that's when you start taking a hard look.

Chair Douglas Purcell agreed.

John Byrnes said that's where he's coming from. He said the ZBA had granted this before. He said he didn't know what the numbers were [for increase in bulk] because the ZBA had never figured them out.

Kristin Franz said many camps on Canada Lake had greatly increased in bulk.

John Byrnes said his camp as well.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

All board members said no.

Chair Douglas Purcell agreed.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

Chair Douglas Purcell said that he did not believe it was self-created.

All board members agreed.

Chair Douglas Purcell quoted from the [Zoning Ordinance Article 11, § II\(3\)\(a\)\(2\)\(iii\)](#).

The ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Chair Douglas Purcell said he would entertain a motion.

**Motion:** John Byrnes moved to approve application [Z2021-07](#).

Kenneth Coirin seconded the motion.

Roll call vote:

Chair Douglas Purcell: no.

Frank Malagisi: yes.

Kenneth Coirin: yes.

Kathleen Ellerby: yes.

John Byrnes: yes.

Chair Douglas Purcell said congratulations, the variance has been granted. He said the application would be referred to the APA and the APA has 30 days after it receives a complete referral to reverse

the granting of the variance. He said if the decision was not reversed by the APA, the Caroga Code Enforcement Office will notify the applicant and the building plans would be reviewed and a determination made as to whether to issue a building permit. He said it would take a little while for the Clerk to do the minutes and the Decision Notice.

Clerk explained to the applicants that the Adirondack Park Agency could issue a “stop clock” if there was additional information needed until such time as the applicant supplied that information.

Chair Douglas Purcell said that he had one other piece of business. He said that apparently the Planning Board has said it was in his court to schedule a meeting to talk. He said it is interesting that he had already given the Planning Board a date.

Chair Douglas Purcell proposed a work session with the Planning Board for November 17, at 7:00 pm to discuss dimensional standards and how they apply to Lot Line Amendments and Subdivisions. He said that Code Enforcement Officer Jennifer DeRocker-Blowers has sent out a checklist for Code Enforcement for what is necessary for a Hearing Notice to be issued.

All board members agreed to that date.

Chair Douglas Purcell asked board to meet on November 17, at 6:30 to review the upcoming Burton Use Variance and then refer it for section 239-m review.

Chair Douglas Purcell asked for a motion to adjourn.

**Motion:** Frank Malagisi moved to adjourn.

Kathleen Ellerby seconded the motion.

All were in favor of adjourning. None were opposed.

The meeting adjourned at 8:04 pm.

Respectfully submitted  
James McMartin Long  
Town of Caroga Town Board Member,  
Zoning Board of Appeals Clerk/Secretary