

**d. Continued Organizational Meeting—Per the adopted 2022 Rules of Procedure****e. Approval of the Minutes—April 7, 2022 and May 5, 2022**

Mr. Kochersberger made the motion to approve the minutes from April 7, 2022 and May 5, 2022 and Ms. Miller seconded the motion. Motion carried by voice vote.

**f. Privilege of the Floor****g. Report of the Development Office**

None.

**h. Referral from the Town Board**

None.

**i. Referrals from the Citizens' Implementation Committee (CIC)**

None.

**j. Referral from the Ordinance Committee**

None.

**k. Referrals from the Planning Review Committee (PRC)**

*Referred May 16, 2022*

**ZONING BOARD OF APPEALS FOR TUESDAY, JUNE 21, 2022****PLANNING BOARD FOR WEDNESDAY, JUNE 29, 2022****CPN-22-018**

Professional Engineering Group, c/o Scott Harter, P.E., 7171 Victor–Pittsford Road, Victor, N.Y. 14564; and James Fahy Design, 2024 W. Henrietta Road, Suite 3K, Rochester, N.Y. 14623; representing Schottland Chosen Spot LLC, 777 Driving Park Avenue, Rochester, N.Y. 14613; owner of property at 5272 Menteth Drive.

TM #140.11-1-21.110

Requesting an Area Variance for setback from the stream and a Single-Stage Site Plan approval for construction of a new single-family residence on a currently vacant land parcel.

**Reviewer: ECB Members. Site visit and photos by Ms. Burkard.**

**Summary of Key Points:**

- See environmental concerns and ECB comments below.

**Environmental Concerns:**

- **FLOODING:**
  - This property floods from both the lake and stream.
  - Significant evidence of erosion from heavy storm events noted on site.
  - Changes in water flow and flooding on this property will impact houses down stream—some which sit very close to the stream and well within stream setbacks.
  - According to topographical maps, the water will flow from this property to the neighboring properties between this parcel and the lake.
- **STREAM BANKS/DELTA/ECOLOGY:**
  - Stream banks are held in place by trees/tree roots.
  - Plans do not include creating a multi-storied riparian border planting.
  - Trees on parcel are what is providing stability to this stream delta and storm water management.
  - Health of the riparian zone is questionable due to profusion of invasive species like Japanese knotweed and lack of maintenance.
  - This parcel is part of a stream delta system and changes to the parcel as well as the stream bank will have a great impact on the whole system.
  - House leach field is located 60' from the streambed.
  - This stream is one of the major tributaries for Canandaigua Lake. It is habitat and a spawning area for trout and other fish. The tree canopy shading the stream is required for maintaining proper stream temperatures as trout are temperature dependent.
- **TREES:**
  - Removal of most large, mature trees noted in plans. Only fourteen trees noted out of the fifty-five surveyed will be retained.
  - Cutting of trees directly on the stream bank shown in plans. The plans show that the stumps will be retained but this will not serve long-term needs as they will rot within ten years. Trees with large root systems are required to hold the soil in place on the stream edge. Ornamental/small trees noted in plans will not suffice.
  - Trees slated for removal include those of 20-40" diameter.
  - The justification for removing the black walnut trees noted on the site plan (allelopathy) is not valid if planting with native species that are tolerant of black walnuts—as evidenced by other trees, shrubs, and herbaceous plants currently growing on this site.

- Removal of the large trees and other vegetation will change lake views of this parcel.
- VARIANCE:
  - Applicants are seeking to build within the 100' stream setback and are seeking a 65' variance.

**Additional Comments from the ECB Meeting:**

- Ms. Burkard visited the site and took photos which are shared on the Board documents page.
- Mr. Kochersberger drove by after rain to see the creek level which he noted as low.
- Ms. Rudolph said she was very familiar with this creek as she grew up playing in and around it. She noted that this creek is never dry and always has water. She noted that it can have a much higher level of water—April being the highest in her opinion. She continued that this property can have flooding from both the creek and lake.
- Ms. Burkard said that the creek banks were very shallow and only held together by trees (tree roots). The trees are the stream bank.
- Ms. Rudolph noted that plans indicate removal of forty-one of the mature trees surveyed on site. There is a plan to cut down trees on the stream bank and leave stumps. ECB members are very concerned with this plan.
- Ms. Burkard said that there is the removal of cottonwood trees noted. She agreed with those removals.
- Ms. Davey said that a tree stump will last approximately ten years before it rots away. Ms. Davey notes that something with a large root system that holds the soil in place will be required. Small ornamental trees, like the redbuds noted in plans, will not work.
- Ms. Burkard said that the house is planned to be within the stream set-back (at a distance of 35') and the applicants are seeking a 65' variance.
- Mr. Damann said the plan shared did not attempt to create a multi-storied riparian zone planting.
- Ms. Rudolph said most trees on site are black walnuts, sugar maples, cottonwoods, and elms.
- Ms. Burkard said that notes on the plans say that the black walnuts are being removed because the trees are allelopathic. Ms. Rudolph said that some of the black walnuts are 30-40" trees. Ms. Burkard also noted that there are very large trees on this property.
- Ms. Miller questioned how the elms are doing. Ms. Burkard said she did not see them. Ms. Rudolph said they are smaller



(~10"). Ms. Miller added that American elms sometimes grow for a while before the Dutch elm disease manifests. Ms. Rudolph noted a 20" elm as being the largest. Ms. Burkard said she said much black walnut plus some basswood and sycamore.

- Ms. Burkard shared photos of the site. She noted a number of invasive species along the streambed as well as dead trees.
- Ms. Burkard noted a deep gully along the northern edge of the parcel running to the stream. Ms. Davey said it was due to erosion and that most erosion happens during sudden heavy down pours. Regular rainfalls will not show erosion but heavy rain events will. Ms. Davey noted that the trees on the parcel are what is keeping the delta intact.
- Ms. Burkard noted that a profusion of invasive species in the stream riparian areas and said the health of those areas is questionable. Ms. Davey noted that the area has not received much care.
- Ms. Burkard noted that the stream is wide and flat in this location with small banks and suspected it would be easy for it to overrun its banks. Ms. Rudolph said the water in the photos was low compared to her experience of the stream.
- Ms. Rudolph noted that this stream has been a smelt run.
- Ms. Miller asked if there were plans to reinforce the stream banks beyond the few trees and stumps they intend to leave. None noted in the plans.
- Ms. Rudolph shared Ms. Bonshak's comments:  
*"I am very interested in the Board's insight as it relates to this piece. They are asking for a substantial variance from the stream bank. If you know this site, it takes on incredible overflow from Menteth Creek so management of that is a concern. I have been on site twice now, once with the architect, Kevin Olvany and the engineer, and we asked him to do a substantial planting plan for the stream bank (create a better riparian buffer) as well as update the tree inventory to reflect what is staying and what is being proposed to be cut. I don't believe this is very visible from the lake but we have asked that they demonstrate it."*
- There was discussion about the visibility from the lake. There was concern that the removal of so many mature trees will change the view.
- Mr. Kochersberger questioned the justification for the 65' variance—if it was only a matter of precedence. ECB members expressed a deep concern about so many granted variances that are directly against established guidelines and laws as well as recorded ECB recommendations. Mr. Damann

noted that the ECB consistently recommends the 100' stream setback and prefers 150' if possible. There was discussion about respecting homeowners' rights but that also includes the rights of other residents of the Menteth Creek area.

- Ms. Rudolph questioned about the flooding here during a specific storm event (2005-2006). Ms. Davey said it was flooded and to contact Mr. Olvaney or the Watershed Association for photos. Ms. Davey said that this is a delta that floods and carries material into the lake. Concerns about downstream properties that will be impacted by proposed changes.
- Ms. Rudolph noted that the proposed house will be visible from the lake.
- Topographical maps on ONCOR reviewed. The water will flow from this property to other properties between it and the lake.
- This parcel is part of a stream delta system and changes to the parcel as well as the stream bank will have great impact on the entire system. Ms. Rudolph noted that the stream is not just a normal blue-line stream as it is one of the major tributaries of Canandaigua Lake. It was also noted that this is a trout stream.
- Mr. Kochersberger asked about the justification of cutting all the black walnut trees. Ms. Burkard said the site plan made note of black walnuts being allelopathic. Mr. Kochersberger commented that was a weak argument for removing the trees. Mr. Damann notes that native species do not have an issue growing around black walnuts. Ms. Burkard noted many trees growing with them on site currently.
- Discussion about size of house and variance (65') being requested.
- Mr. Damann noted poor choice for the location of the temporary topsoil stockpile—close to the stream. He continued that it is understandable to remove trees for the leach bed but it looks as though trees are being removed for the topsoil stockpile.
- Discussion about a leach field being 60' from the streambed that feeds directly into the lake.
- Mr. Kochersberger noted the variance application that mentions a tree plan from the landscape architect. It is unclear whether the information included in the site plan is this plan or not.
- Discussion about house plans being altered to stay outside of the 100' stream setback. Ms. Davey noted that the ECB reviews many plans of people that buy too small of a lot to build what they want on it and then seek to get variances from the town to make it fit.

- Ms. Rudolph made the point that this is not just “any” stream and needs to have different consideration.
- The 100-year flood plain is noted on the plans. Ms. Davey noted that the stream flood plain is the 100’ stream setback. It was noted that the parcel was very flat. Ms. Davey said that the elevation is behind the house and water will flow towards this location. Ms. Davey said that is why the stream is so flat and full of gravel. Waterfall across the road noted. More material will be deposited in the stream which will exacerbate flooding.
- Mr. Kochersberger noted that the stream setback is to protect the homeowner as well as the stream/ those downstream. He noted information from the variance application about other neighboring properties within stream setbacks as a justification. Mr. Damann said that each site is its own decision regardless of previous decisions. Mr. Kochersberger noted changing ideas and climate change have changed how we think about such properties.
- Ms. Davey reminded everyone that this is a trout spawning stream and that shading of the streambed by a tree canopy is critical for trout as temperature dependent. She suggested that the DEC may take interest in these plans.
- Mr. Kochersberger noted that the benefits of granting of the variance **will not** exceed the detriment to the ecology of the area as well as the potential impact to neighbors’ properties.
- Ms. Rudolph questioned whether they needed to submit water quality perseverance measures.
- Ms. Rudolph re-iterated her concerns about cutting out nearly all the trees—keeping only fourteen out fifty-five. Ms. Burkard commented that those are only the trees that they catalogued and that there are more trees on the property than what is noted—smaller trees and shrubs not included in the survey but which are part of the existing vegetation. The ECB members agreed with Ms. Rudolph’s concerns.
- Ms. Rudolph also expressed concern about the proximity of the leach bed to the stream.

**Recommendations:**

- The ECB strongly advises reconsideration of plans regarding tree removal in order to save as many trees and vegetation as possible on the property. The ECB is concerned that the removal of so many trees will destabilize the parcel and the associated stream and stream delta.
- The ECB recommends no healthy trees on the stream bank be cut and if possible, supplement the plantings along the stream



bank with appropriate riparian zone plantings—ideally addressing the invasive species in the process.

- ECB recommends care during earth moving to not spread invasive plants, especially the Japanese knotweed.
- ECB strongly recommends adherence to the 100' setback from the stream and endorses the denial of the stream setback variance. The ECB agrees that the benefits of granting the setback variance will **NOT** exceed the detriment to the ecology of the area, lake health, and the potential flooding impact to the neighboring and downstream properties. The ECB suggests reconsidering plans so the house is resized/repositioned entirely outside of the 100' setback.
- Inclusion of tree plans mentioned in the variance application not available and should be added to the online project information.
- ECB recommends any landscaping should include many trees that will have large, stabilizing root systems such as sycamore, swamp white oak, river birch, tulip poplar, and black walnut—ideally including much of the existing vegetation.
- The ECB recommends more clearly indicating the view from the lake of the proposed structure. Renderings of the view should be included in project information.
- The ECB wants to remind other reviewers that this is a trout spawning stream and that shading of the streambed by the tree canopy is critical as trout are temperature dependent. For this, no trees on the stream bank as well as any trees providing shade to the stream should be removed. The ECB also suggests referring this application to the DEC for review.

#### **PLANNING BOARD FOR WEDNESDAY, JUNE 29, 2022**

##### **CPN-22-029**

**McCormick Engineering P.C. representing applicant Brian Cafalone (Diversified Equipment LLC); and Simmons Rockwell, 784 County Road 64, Elmira, N.Y. 14903, owner of property at 1947 State Route 332**

TM #56.00-1-13.210

Requesting a Single-Stage Site Plan approval for the construction of a lawn and garden equipment shop.

**Reviewer:** ECB Members

##### **Summary of Key Points:**

- Parcel is within the Strategic Farmland Protection Area and the Padelford Brook Greenway.