

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD JUNE 20, 2016

PRESENT were CHAIRMAN MARTIN STEINBACH, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the May 16, 2016 regular meeting. Member Clemente noted a typographical correction at page 7, line 11, changing the word “continue” to the word “continues”. Subject to the typographical correction, Member Clemente made a motion to approve the May 16, 2016 regular meeting minutes, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the minutes of the May 16, 2016 regular meeting were approved as corrected.

The Zoning Board members reviewed the draft minutes of the June 6, 2016 special meeting. Upon motion of Member Clemente, seconded by Member Sclafani, the minutes of the June 6, 2016 special meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Daniel Smith for property located at 899 Hoosick Road. The Zoning Board members reviewed the draft written findings that were prepared based on the deliberations held at the June 6, 2016 special meeting. Chairman Steinbach reviewed the three separate area variance requests, including the side yard setback variance, height variance, and variance for percentage of lot coverage for private garages. Chairman Steinbach also confirmed that each of the Zoning Board members had

received the draft written findings that were prepared based on the deliberations at the June 6, 2016 special meeting, and had adequate time to review the draft findings. The Zoning Board members determined to review the draft findings with respect to the factors which must be considered for each of the requested area variances in this matter. Attorney Gilchrist reviewed the standard for the requested variances, where the Zoning Board must weigh the benefit to the applicant as a result of the variances as against any detriment to the neighborhood in particular and the Town in general, and to complete that balancing test the Zoning Board considers several factors including whether the variance would create a detriment to nearby properties or impair the character of the neighborhood; whether a feasible alternative exists other than the requested variance; whether the variance is substantial; whether the requested variance would result in an adverse effect on physical or environmental conditions in the neighborhood; and whether the need for the variance is self-created. Chairman Steinbach then reviewed the written findings concerning each of these factors with respect to the side yard setback variance request, as follows:

1. *Character of the Neighborhood.* The Zoning Board members conducted site visits and reviewed numerous photographs of the Owner's garage addition. The garage and the garage additions are consistent with the character of the neighborhood, and very similar to the other lots in the surrounding area, including the Brazee lot. Similar to the Smith lot, the Brazee lot located directly to the east includes a house, driveway, and detached private garage on a nonconforming lot.
2. *Detriment to Nearby Properties.* The additions to the original nonconforming garage structure on the Smith lot do not create any detriment to nearby properties, with the exception of creating a ponding of surface water on the westerly side of the Brazee lot during periods of heavy precipitation. According to the Laberge report, the significant contributing factor to the ponding of surface water on the Brazee lot during periods of precipitation is surface water originating on the Brazee lot, which historically had been discharged in a westerly direction onto and/or through the Smith lot, but which is now retained on the Brazee lot as a result of a dam-effect created by the Smith garage extensions. During periods of precipitation, most of the water from the roof of the Smith garage extensions is being directed through gutters to the west of the Smith lot and away from

the Brazee lot. A portion of such roof runoff is discharged from Smith to the Brazee lot, but is not significantly contributing to the ponding of water on the Brazee lot during precipitation events.

3. *Alternative.* The Owner's goal was to create extra storage area. The most feasible method to achieve this result was to extend the existing garage, since the size of the lot does inhibit other options.
4. *Whether Variance is Substantial.* The original detached private garage structure is nonconforming with respect to side yard setback. The original garage structure is located approximately 1 foot from the easterly side yard lot line. While the side yard setback for detached accessory structures under the Brunswick Zoning Ordinance in the R-15 Zoning District is 25 feet, the original garage structure on the Smith lot is nonconforming, and has a side yard setback of approximately 1 foot from the easterly lot line. According to surveys submitted on the variance application, the original detached garage structure on the Smith lot was not constructed parallel to the easterly side yard lot line, with the rear of the garage structure being further to the east than the front of the garage. The extensions to the original garage structure on the Smith lot were constructed consistent with the side wall locations of the original garage structure. Consequently, the garage extensions decreased the easterly side yard lot line setback from approximately 1 foot to 0 feet. In fact, the surveys submitted on this application show that the rear portion of the concrete pad and roof structure (the second addition) encroach onto the Brazee lot by approximately 1 inch. The Zoning Board has no jurisdiction to consider a variance request resulting in an encroachment on an adjacent lot. Further, under the Brunswick Zoning Ordinance, a nonconforming structure with respect to side yard setback can be added to, provided the side yard setback nonconformity is not increased. In this case, the side yard setback of approximately 1 foot could have been maintained if the original garage structure had been constructed parallel to the easterly side yard lot line. The record shows that the decrease in the side yard lot line setback regarding the garage extensions on the Smith lot was not discovered until surveys were completed.
5. *Adverse Effect on Physical Condition of the Neighborhood.* The additions to the original nonconforming garage structure on the Smith lot do not create any adverse effect on the physical conditions in the neighborhood, with the exception of the surface water ponding on the westerly side of the Brazee lot as discussed in point 2 above.
6. *Self-Created.* The record shows that the need for the side yard setback variance was not discovered until surveys prepared subsequent to the construction of the two extensions to the Smith garage showed a decrease in the easterly side yard setback from approximately 1 foot to 0 feet, and in

fact showed a portion of the rear of the garage extensions (second extension) encroaching onto the adjacent Brazee lot by approximately 1 inch. The record shows that Smith was not aware that the original detached nonconforming garage structure was not constructed parallel to the easterly side yard lot line until such surveys were completed. Nonetheless, Smith did construct the two extensions to the original nonconforming detached garage structure, and in that sense the need for the side yard setback variance is self-created.

The Zoning Board members discussed that, to the extent the requested side yard setback variance concerns any part of the garage extensions that have encroached onto the Brazee lot and are situated on the Brazee lot, the Zoning Board had no jurisdiction to grant such a variance and that part of the side yard setback variance request must be denied. Member Clemente did note that Daniel Smith, at the March 21 Zoning Board meeting, confirmed on the record that he would remove any part of the garage extension structures that encroached on to the Brazee lot. With respect to the issue of the ponding of water on the western portion of the Brazee lot in the vicinity of the garage extensions, Member Schmidt did note that the legal standard is that both lot owners in question here, being Smith and Brazee, have equal rights to improve their properties, even if an improvement causes the back-up of surface water flow onto one of the lots, provided that the improvement is made in good faith for the purpose of developing the property for a rational use, and that surface water must not be directed onto other properties by artificial means such as drainage, ditches, or pipes. Member Schmidt stated that in this case, the significant portion of the ponding of water on the western side of the Brazee lot is originating from surface water flow from the Brazee lot, as disclosed in the Laberge expert report. Chairman Steinbach stated that the Laberge report did identify that some of the roof runoff from the Smith garage extensions was being directed to a concrete pad, which in turn discharges the water back to the Brazee lot, and to that extent, that surface water runoff directed to the Brazee lot must be removed, and all gutters must be directed away from the Brazee lot so that the water is directed in a westerly direction away

from the Brazee lot. Hearing no further comments, the Zoning Board members determined that the part of the side yard setback variance sought for any portion of the garage structure that is located on the Brazee lot is denied, and any part of the Smith garage extensions located on the Brazee lot must be removed. The Zoning Board further determined that the part of the variance application sought for a side yard setback regarding the garage extension structures located entirely on the Smith lot, the variance is granted subject to the following condition:

all roof gutters, downspouts, drains, pipes, or other equipment conveying stormwater runoff from the roof or any other portion of the Smith garage extensions must be collected and conveyed to the west side of the Smith lot and away from the Brazee lot so that no stormwater runoff from the roof or any other portion of the Smith garage extensions is discharged to, or entering upon, the Brazee lot. The Town of Brunswick Building Department is directed to confirm compliance with this condition.

Attorney Gilchrist noted for the record that the SEQRA regulations provide that the granting of individual setback or lot line variances or area variances with respect to single-family residences are Type II actions under SEQRA, and no determination of environmental significance needs to be made. However, to the extent that the height variance and variance for percentage of lot coverage for the private garage do not fall within the SEQRA Type II categories, the Zoning Board should make a determination of environmental significance under SEQRA prior to acting upon the height variance request and the variance request for percentage of lot coverage for private garages. The Zoning Board members reviewed the environmental assessment form, and determined that the record does not include the potential for any significant adverse environmental impacts, and to the extent the ponding of water on the western side of the Brazee lot occurs, that environmental impact is deemed not to be significant. Chairman Steinbach then made a motion to adopt a negative declaration under SEQRA for this action, which motion was seconded by Member Sclafani. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning

Board then proceeded to review the variance application with respect to height of the garage extensions. On that variance request, Chairman Steinbach reviewed the draft written findings concerning the factors to be considered, as follows:

1. *Character of the Neighborhood.* The Zoning Board determines that the height of the garage extensions on the Smith lot are not inconsistent with the rest of the neighborhood. The Zoning Board further determines that the garage extensions appear to be “just another garage”, both while driving by the property and while on the property. Other properties in the neighborhood include similar detached garages, and the Smith garage extensions, including the issue of height, are not considered out of character for the neighborhood.
2. *Detriment to Nearby Properties.* The Zoning Board finds that the height of the garage extensions do not have any impact on nearby properties. The issue of surface water runoff is unaffected by height, as the runoff from the roof of the garage extensions is handled in the same manner regardless of height, and the total volume of runoff is unaffected by height. The roof is angled and guttered in the same manner regardless of height, and moves water from the same downspouts.
3. *Alternative.* The Zoning Board of Appeals determines that the additions to the garage could have been designed and constructed to match the height of the original garage. However, the Zoning Board notes that building the addition at the same height as the original garage structure would not have achieved the Owner’s goal of creating the amount of extra storage space above the garage.
4. *Whether Variance is Substantial.* The Zoning Board of Appeals determines that increasing the height of the garage from 12 feet to 16 feet is not a significant increase when considering similar structures in the immediate neighborhood.
5. *Adverse Effect on Physical Condition of the Neighborhood.* The Zoning Board finds that the height of the garage extensions do not create an adverse effect on physical conditions in the immediate area. The Laberge report does not identify the height of the garage extensions as creating or contributing to an adverse effect on physical conditions.
6. *Self-Created.* The Zoning Board determines that the height variance is self-created, as the Owner would not have required the area variance for height if he constructed the additions at the same height as the original garage structure, and did not increase the regulatory height by four feet.

Following discussion, the Zoning Board members determined to grant the height variance request without conditions. The Zoning Board members then proceeded to discuss the variance request pertaining to percentage of lot coverage for private garages. Chairman Steinbach again reviewed the draft written findings concerning the factors to be considered, as follows:

1. *Character of the Neighborhood.* The Zoning Board determines that while the Brunswick Zoning Code requires garages to be four percent or less of the lot coverage, and the Owner's garage is now 10.62% of the lot coverage, it is consistent with the surrounding properties. The Zoning Board observes that the detached garage on the Brazee lot to the east covers approximately 15% of the lot. The Zoning Board further determines that based on their visual assessment while on the property, the size of the garage is not out of ordinary to the surrounding area or character of the neighborhood.
2. *Detriment to Nearby Properties.* The Zoning Board determines that the percentage of lot coverage regarding the Smith garage with the extensions may be contributing to the ponding effect on the adjacent Brazee lot located to the east. However, as discussed above regarding the side yard setback variance, the percentage of lot coverage is not significantly increasing surface water runoff generated on the Smith lot and discharging to the Brazee lot; rather, the percentage of lot coverage contributes to the dam-effect of the Smith garage extensions, resulting in surface water runoff generated on the Brazee lot now being retained on the Brazee lot during periods of precipitation rather than discharging in a westerly direction onto and/or through the Smith lot.
3. *Alternative.* The Owner's goal was to increase storage space, which could not have been achieved in any other feasible manner than to increase the size of the existing garage, which implicates the percentage of lot coverage issue. The Zoning Board notes that while the Owner could have purchased more land to decrease percentage of lot coverage, this option is not available to the Owner. It is also noted that the original conforming garage structure is 648 square feet, resulting in 4.6% lot coverage. Accordingly, the original garage was in excess of maximum lot coverage, and was nonconforming on that issue as well.
4. *Substantial.* The Zoning Board of Appeals determines that, prior to the construction of the two extensions to the original garage, all structures on the Smith lot covered 1,648 square feet, or 11.7% of the total area of the Smith lot. With the two extensions to the garage, the total percentage of lot coverage for structures on the Smith lot increases to 17.775%. The Zoning Board finds that the total percentage of lot coverage regarding structures on the Smith lot is not substantial, with 82.225% of the lot area remaining open.

Also, the total percentage of lot coverage regarding structures on the Brazee lot is 26.663%.

5. *Adverse Effect on Physical Conditions.* The Zoning Board determines that the percentage of lot coverage for the Smith garage does not create any adverse effects upon physical conditions in the immediate area, except for the surface water ponding on the western side of the Brazee lot. The findings concerning the surface water issue during periods of precipitation as discussed above with reference to the side yard setback variance are incorporated herein.
6. *Self-Created.* The Zoning Board finds that the percentage of lot coverage for the garage extensions is self-created.

The Zoning Board members again determined that in the event any part of the requested variance for percentage of lot coverage pertains to any part of the garage extension structure located on the Brazee lot, that variance must be denied. The Zoning Board members further determined that the requested variance for percentage of lot coverage implicates the ponding of water on the Brazee lot, and the condition that was imposed with respect to the side yard setback variance should likewise be imposed with respect to the variance for percentage of lot coverage. The Zoning Board members then determined to grant the variance for percentage of lot coverage for private garages, subject to the following condition:

all roof gutters, downspouts, drains, pipes, or other equipment conveying stormwater runoff from the roof or any other portion of the Smith garage extensions must be collected and conveyed to the west side of the Smith lot and away from the Brazee lot so that no stormwater runoff from the roof or any other portion of the Smith garage extensions is discharged to, or entering upon, the Brazee lot. The Town of Brunswick Building Department is directed to confirm compliance with this condition.

Based on these decisions, the Zoning Board members requested attorney Gilchrist to prepare a final written decision incorporating the findings and final decisions on the variance application. Further, to timely complete and adopt the final written decision, the Zoning Board determined to schedule a special meeting for June 27, 2016 for the purpose of reviewing and adopting a final

written decision consistent with the final deliberations and decisions made at the June 20 meeting. Accordingly, a special meeting is to be noticed for June 27, 2016, commencing at 6:00pm, for the purpose of reviewing and adopting a final written decision consistent with the deliberations and decisions reached at the June 20 meeting.

The next item of business on the agenda was the area variance application submitted by Jim and Kim Wilson for property located at 3 Arminghall Drive. Jim Wilson was present. Chairman Steinbach requested Mr. Wilson to review the current proposed location for a shed at this property. Mr. Wilson reviewed that an alternative location for the shed at this property had been presented after discussion with the Brunswick Building Department, and that the shed is now located 69 feet, 3 inches from the front property line adjacent to Arminghall Drive, and is 10 feet from the principal house structure on the lot. Accordingly, there are no variance requests with respect to the setback from Arminghall Drive or the setback from the principal house structure. Mr. Wilson then explained that the shed is located 26 feet, 7 inches from the side yard lot line, but that this parcel is a corner lot, and the particular side yard line at issue is adjacent to Charnwood Lane, which also requires the front yard setback distance pursuant to the Brunswick Zoning Ordinance. Therefore, Mr. Wilson is requesting a variance from the front yard setback requirements with respect to the shed location from the lot line adjacent to Charnwood Lane. Chairman Steinbach noted that since the application had been amended, and shows a substantially different shed location than originally sought, the Zoning Board had re-noticed the public hearing and that the public hearing would be continued at this meeting. The notice of public hearing was read into the record, noting that the public hearing notice had been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties. Chairman Steinbach then opened the floor for the receipt of public comments. No

members of the public wished to provide any comments. Thereupon, Member Clemente made a motion to close the public hearing, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed. Chairman Steinbach then stated in his opinion, the current proposed location of the shed was appropriate, that no members of the neighborhood opposed the location of the shed, that the lot line requiring the need for the variance was adjacent to a public road and would not impair any adjoining neighbor, and that he did not see any impact to the town as a whole. Member Sclafani concurred that there would be no impact to neighbors, and that while the requested variance could be deemed substantial from a numeric standpoint, the fact that the setback is from a public road is a factor to be considered and she feels that this variance is not substantial due to the road location, and further that while the need for the variance is self-created, she feels that the applicant did work with the Town Building Department to find an alternate location which reduced the need for total number of variances. Member Clemente concurred, saying that a feasible alternative had been achieved between the applicant and the Building Department, and that the lot does have some issues concerning wet areas that inhibit shed locations. Attorney Gilchrist stated that the application seeks a lot line variance and area variance for a residential setting, and is a Type II action under SEQRA. Chairman Steinbach inquired whether there were any further comments. Hearing none, Chairman Steinbach made a motion to grant the area variance, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance granted without condition. The applicant is directed to coordinate with the Brunswick Building Department.

The next item of business on the agenda was the referral of the McCarty rezoning petition from the Brunswick Town Board for recommendation. Attorney Gilchrist reviewed the status of the petition seeking this rezoning, including the final Planning Board written recommendation.

The Zoning Board members reviewed the Planning Board recommendation, and concurred in its findings and favorable recommendation. Member Clemente felt that the Zoning Board should stress the considerations of traffic safety and pedestrian safety at this location, particularly since traffic on Hoosick Road is already significant and, at present, is only two lanes. Chairman Steinbach concurred, and stated that special attention needs to be paid to traffic and pedestrian safety on any specific site plan proposal for this parcel. The Zoning Board members requested attorney Gilchrist to prepare a written recommendation consistent with the Planning Board's written recommendation, and that the Zoning Board's recommendation will be reviewed and finalized at the June 27 special meeting.

Two new items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Todd Skiba for property located at 11 Walter Road. The applicant seeks a side yard setback variance with respect to installation of a 24-foot above-ground pool. The Brunswick Zoning Ordinance requires a 15-foot side yard setback, and the applicant is seeking a variance of 8 feet, to allow the pool to be installed 7 feet from the side yard lot line. The Zoning Board members reviewed the application materials, including a schematic of the lot showing the location of all structures, septic tank, and leach field, and also the proposed pool location. The Zoning Board members determined the application materials were complete, and scheduled this matter for public hearing at the July 18 meeting to commence at 6:00pm.

The second item of new business discussed was an area variance application submitted by Eric Fuller for property located at 11 Brunswick Park Drive. The applicant seeks three variances with respect to a proposed installation of a 12-foot by 21-foot shed. The applicant is seeking a rear yard setback, with the Brunswick Zoning Code requiring a 20 foot setback and the applicant

seeking a 3 foot setback. The applicant also is requesting a side yard setback variance, with the Brunswick Zoning Code requiring a 15 foot setback, and the applicant seeking an 8 foot setback. The applicant is also seeking a variance for percentage of lot coverage for accessory structures. The Zoning Board members reviewed the application materials, including a schematic of the lot showing location of the house, septic system and leach field, pool and deck, and the proposed shed location. The Zoning Board members determined the application to be complete, and scheduled a public hearing for this application to be held at the July 18 meeting commencing at 6:15pm.

The index for the June 20, 2016 meeting is as follows:

1. Smith - Area variance - 6/27/2016
2. Wilson - Area variance - Granted
3. McCarty - Recommendation on zone change petition - 6/27/2016
4. Skiba - Area variance - 7/18/2016 (public hearing to commence at 6:00pm)
5. Fuller - Area variance - 7/18/2016 (public hearing to commence at 6:15pm).

The agenda for the special meeting to be held on June 27, 2016 is as follows:

1. Smith - Area variance
2. McCarty - Recommendation on zone change petition

The proposed agenda for the July 18, 2016 meeting currently is as follows:

1. Skiba - Area variance (public hearing to commence at 6:00pm)
2. Fuller - Area variance (public hearing to commence at 6:15pm).