

## **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 AUGUST 15, 2016**

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

ABSENT was WILLIAM SHOVER.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The draft minutes of the July 18, 2016 meeting were reviewed. Upon motion of Member Clemente, seconded by Member Sclafani, the draft minutes of the July 18, 2016 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Eric Fuller for property located at 11 Brunswick Park Drive. Mr. Fuller was present. Chairman Steinbach inquired whether there were any changes or additions to the application materials. Mr. Fuller said there were no changes to the application and no additional submissions. Thereupon, the Zoning Board opened the public hearing on the Fuller area variance application. The notice of public hearing was read into the record, having been published in the Troy Record, placed on the Town signboard, posted on the Town website (noting recent technical issues with the Town website), and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. Theresa Alberelli-Naples, 23 Brunswick Park Drive, stated she was present to support the area variance application; that the back of this lot, similar to the other lots on this side of Brunswick Park Drive, back up against an electric power line corridor owned by National Grid so there is no impact concerning the rear setback; that she is not aware of any complaints concerning the installation of a

shed in the proposed location on the Fuller lot; and that the Fullers keep their property in nice shape, and the addition of the shed would add to the appearance of the property. Chairman Steinbach called for any additional public comment. Hearing none, 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 on the Fuller area variance application was closed. Chairman Steinbach stated that the Zoning Board was prepared to proceed with consideration of the requested area variances. Attorney Gilchrist noted that the application seeks area variances in connection with a single-family residence and requests individual setback and lot line variances, which constitute a Type 2 action under SEQRA and no further SEQRA determination is required. Chairman Steinbach stated that the Zoning Board will consider all three of the requested variances as they deliberate on the elements for area variance. The three variances requested include a rear yard setback variance, a side yard setback variance, and a variance for lot coverage for accessory structures. On the issue of whether the requested variance would result in a change of the character of the neighborhood or create a detriment to nearby properties, Chairman Steinbach stated that in his opinion, none of the requested variances would result in a change in the character of the area and the addition of a shed in the rear yard is standard for a residential setting. Member Sclafani stated she visited the property, and based on her review of the surrounding properties, adding a shed to the rear yard in the proposed location would fit in with the character of the surrounding lots. Zoning Board members determined that there would not be any detrimental impact to surrounding properties as a result of granting the requested variances. As to whether there was a feasible alternative that would not require the variances, Member Clemente stated that there is a limitation in the rear yard area due to the septic system location, and that in her opinion, the proposed location was a reasonable location in the rear yard to place a shed. Chairman Steinbach stated that he did agree with the limitation based on the location of the septic system, and also felt that the size of the lot, given the presence of the existing structures, was also a factor to consider. As to whether the requested variances were substantial, the Zoning

Board reviewed the extent of the requested variances, which include a rear yard variance of 17 feet (20 required, 3 proposed); a side yard variance of 7 feet (15 feet required, 8 feet proposed); and a variance allowing an additional 27 square feet for total lot coverage for accessory structures (225 square feet allowed, 252 square feet proposed). Member Schmidt stated that in his opinion, the only requested variance that is substantial is the rear yard variance, but that the rear of this lot is adjacent to a National Grid power corridor, which affects the analysis in this case as to whether the variance is substantial. Member Sclafani agreed. Member Clemente noted that she felt that this lot was unique given the adjacent National Grid power corridor. Chairman Steinbach noted that while the amount of the rear yard setback could be considered substantial in residential setting, this situation is different because of the National Grid power corridor, and that the Zoning Board could determine that a requested variance for rear yard setback of this magnitude is substantial in other situations. As to whether the requested variances will have an adverse effect on the physical or environmental conditions in the neighborhood, Member Sclafani stated that based on her site visit, it is her opinion that there will be no adverse environmental impacts from the placement of the shed in the proposed location. Member Clemente noted that the residential lot is well landscaped, and that the shed will add to the appearance of the residential lot, and concurs that there are no adverse environmental or physical impacts from the proposed location for the shed. As to whether the difficulty requiring the area variances is self-created, Chairman Steinbach again noted that while the need for the variances can be considered self-created, this does not preclude the Zoning Board from granting the variances, and did note that given the limitations of the lot, including the location of the septic system, as well as the fact that the lot is adjacent to a National Grid power corridor, the need for the variances can be considered self-created but that factor should not preclude granting the variances in this case. Based on deliberation of these factors, Chairman Steinbach requested a motion for action on the requested area variances, noting that the Board must consider the benefit to the applicant in granting the area variances as weighed against any detriment to the neighborhood in particular or the community in

general. Based on the deliberations and considering the application materials, Member Clemente made a motion to grant each of the requested area variances on the condition that the applicant coordinate and comply with all Town of Brunswick Building Department requirements for the shed installation. Member Schmidt seconded the motion. The motion was unanimously approved, and the requested variances granted on the Fuller application.

The next item of business on the agenda was area variance application submitted by Richard Wiley for property located at 4156 NY Route 2. Mr. Wiley was present. Chairman Steinbach inquired whether there were any changes to the application, or any additional application documents. Mr. Wiley stated that there were no changes to the application, and no further submissions. Thereupon, the Zoning Board opened the public hearing on the requested area variance for Richard Wiley. The notice of public hearing was read into the record, having been published in the Troy Record, placed on the Town signboard, posted on the Town website (noting recent technical issues with the Town website), and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. No members of the publish wished to provide comment on the application. Member Scalfani made a motion to close the public hearing, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing on the Wiley area variance application was closed. The Zoning Board noted that this application seeks a variance for percentage of lot coverage for a private garage, with the applicant proposing to install a 40-foot by 40-foot steel garage for the purpose of housing a dump truck, backhoe, and other equipment that is currently being stored outside on the property. Chairman Steinbach noted that the Zoning Board was ready to proceed with deliberation on the application. Attorney Gilchrist noted that the application seeks an area variance in connection with a residential use, and therefore constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. Member Clemente had two questions concerning the application. Member Clemente asked whether the photographs submitted with the application materials were accurate, and that the steel structure to be

installed would look like the photographs. Mr. Wiley stated that the photographs were accurate, and the only difference would be the color of the structure. Mr. Wiley confirmed that the structure will be one story, and the entrance to the garage would be on the rear side. Member Clemente asked whether there was another portable storage container already on the property. Mr. Wiley confirmed that there was a portable container on the property, and that he would be keeping the portable container on the lot. Member Clemente inquired of Ms. Guastella whether the portable container was calculated into the requested variance for lot coverage for private garages. Ms. Guastella stated that the container is not included within the calculation because the variance is with respect only to percentage of lot coverage by private garages, and that the portable container does not constitute a private garage. Chairman Steinbach then stated the Zoning Board should proceed to consider the elements for the area variance request. As to whether the requested variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Schmidt stated that he had visited the site, and that from the public road, he could not see the back of the lot area where the steel structure would be placed, and you could not see that location unless you walked down to the end of the driveway. Member Schmidt stated that he did not think the placement of this steel structure would change the character of the neighborhood or create a detriment, as no one will be able to see the steel structure from the public road. Member Sclafani stated she also visited the site, and that there is a lot of equipment currently stored outside on the yard, and that having the steel building on the property to house this equipment will actually improve the appearance of the lot. Member Clemente stated that the lot was somewhat uniquely located, as it was adjacent to the parking lot for the medical building on Route 2, and also adjacent to the Whalen lot that has buildings on it in that location, and Member Clemente concludes that the placement of the steel structure would fit into the character of that area and actually improve the appearance since the equipment will now be housed in a steel building. As to whether there is a feasible alternative available to the applicant, Member Schmidt stated that the only alternative was to leave the equipment

outside on the property, which Member Schmidt did not feel was a viable alternative, and that Mr. Wiley would need a steel structure big enough to house the dump truck, backhoe, and other equipment. Chairman Steinbach noted that putting the dump truck, backhoe, and other equipment inside a steel structure will actually be better for the neighbors from a visual perspective. As to whether the requested variance is substantial, it is noted for the record that the Brunswick Town Code allows 3% lot coverage for private garages, which in this case would allow 928.74 square feet for a private garage, whereas the proposed steel structure is 1,600 square feet. Chairman Steinbach stated that this variance will be substantial, but that with the proposed location to the rear of the lot and the overall size of the lot, the placement of the steel building will not be totally out of line with the area, and that the screening and other visual appearance of the lot make the situation not as pronounced as the mere numbers suggest. Member Schmidt stated that he did feel the variance request was substantial, but the fact that he could place the 1,600 square foot steel building on the lot without the need for any other variance shows that it can fit appropriately on the lot, and that the limitation on the percentage of lot coverage for private garages is not as pronounced with respect to this particular lot. As to whether the requested variance would result in an adverse effect upon the environmental or physical conditions in the neighborhood, Member Sclafani stated that she felt housing the equipment in the steel building will actually improve the visual aspect of the lot from the neighbors' perspective, and felt there was no environmental impact. Chairman Steinbach made a note that the application documents confirm that there are no drains proposed for the floor of the garage, that he did not feel there would be any stormwater runoff effects, and concluded that there were no adverse environmental or physical effects from the application. As to whether the need for the variance is self-created, Chairman Steinbach noted again that the need is self-created, but that in this case it should not preclude consideration of granting the variance. Chairman Steinbach then said the Zoning Board should entertain action on the variance application, and that the Zoning Board should weigh the benefit to the applicant as opposed to any detriment to the neighborhood in particular and community

at large. Member Sclafani made a motion to grant the requested variance for lot coverage for private garages, upon the condition that the applicant coordinate and comply with all Town of Brunswick Building Department requirements in connection with installation of the structure. Member Schmidt seconded the motion. The motion was unanimously approved, and the area variance for percentage of lot coverage for private garages granted for the Wiley lot.

The next item of business on the agenda was the area variance application submitted by Michael Vickers for property located off Krieger Lane (Tax Map No. 83.-2-4.4). Mr. Vickers was not present, but the application record does include written authorization to have Larry Broderick represent Mr. Vickers at this meeting. Larry Broderick was in attendance. Chairman Steinbach asked whether Mr. Broderick was familiar with the application. Mr. Broderick stated that he was familiar with the application. Chairman Steinbach asked whether there were any changes to the application, or any additional submissions. Mr. Broderick stated that there were no changes and no additional submissions. Chairman Steinbach asked whether there were any questions by the Zoning Board members. Member Schmidt questioned whether the right-of-way owned by Vickers follows the driveway that is now leading from Krieger Lane to the Dayton home. Mr. Broderick thought that the driveway for the Dayton house was located within the 40-foot right-of-way. Member Schmidt asked whether the width of the blacktop driveway to the Dayton house is in the center of the 40-foot right-of-way, or whether it is off-center. Mr. Broderick did not know that information. Member Schmidt was concerned that construction vehicles that may access the Vickers property in connection with any approved subdivision or building lot would damage the existing driveway, and questioned whether there was any driveway maintenance agreement between Vickers and Dayton. Mr. Broderick did not have any of the particulars regarding the Dayton driveway or any driveway maintenance agreement. The Zoning Board then opened the public hearing on the Vickers area variance application. The notice of public hearing was read into the record, having been published in the Troy Record, placed on the Town signboard, posted on the Town website (noting recent technical issues with the Town

website), and mailed to owners of adjacent property. Chairman Steinbach then opened the floor for the receipt of public comment. Mrs. Flora Lee Ashdown stated that she owns the property immediately adjacent to Vickers, and that she also has ownership interest in the same 40-foot right-of-way that provides access to the Dayton lot, as well as provides access to the Vickers lot. She said that her property, Vickers property, and the Dayton property all share the same easement. Mrs. Ashdown confirmed that there is a house on the Dayton lot, but that the Vickers lot is vacant, and her property is 18 acres of wooded land. Mrs. Ashdown stated that there are no buildings on her property, but she does like to hike her 18 acres. Chairman Steinbach asked whether there was any road whatsoever leading from the Dayton driveway back to the Vickers lot and ultimately back to Mrs. Ashdown's property. Mrs. Ashdown stated that there is no roadway past the Dayton driveway, but that there was probably an old farm road that went back to her property in the past. There were no further public comments at this time. Chairman Steinbach noted that there were a number of factors that needed to be considered by the Zoning Board in connection with this area variance application. Attorney Gilchrist reviewed with the Zoning Board members the need for the area variance in this case. Mr. Vickers owns a 5.5-acre lot, and has filed an application for subdivision with the Brunswick Planning Board, seeking to divide the 5.5 acres into two building lots. According to New York Law, each building lot is required to have frontage on a public road, the primary reason for which is so that the lot has access by emergency vehicles. New York Law also provides that if access to the building lot is by private easement or right-of-way only, that an application for an area variance can be made to the Zoning Board, which has resulted in the current application by Vickers. Attorney Gilchrist noted that the Zoning Board should consider a number of factors, including adequate emergency vehicle access, drainage, utilities, necessary width of any roadway, and also an enforceable road maintenance agreement to ensure that the road is properly maintained in the future since this will not be a Town road but rather a private road/driveway. Attorney Gilchrist also noted that in the event the Zoning Board did grant the area variance, Mr. Vickers is still required to obtain relief from the



Brunswick Town Board as the additional building lot is in excess of the maximum number of lots on a dead end or cul-de-sac road under the Brunswick Town Code, and that it is the Brunswick Town Board that will need to address that issue. Chairman Steinbach stated that the Board needs additional information, most particularly that the Building Department should coordinate with the appropriate fire department to view the site and give the Zoning Board information as to what is needed for adequate emergency vehicle access. Member Schmidt also stated that he wanted additional information as to the exact location of the 40-foot private right-of-way, that it should be shown on a survey or map, including the location of the Dayton driveway within that 40-foot right-of-way. Ms. Guastella stated that she would coordinate with the applicable fire department to get the information concerning emergency vehicle access, and also noted that when Mr. Vickers acquired his lot there were percolation tests that were done in the early 1990's, but that updated percolation tests would be required in connection with any building lot that would need to be reviewed by the Rensselaer County Health Department for adequate septic. The Zoning Board determined to keep the public hearing open until the additional information is provided, and has scheduled the public hearing to continue at its September 19 meeting, with the public hearing to continue at 6:30pm.

The next item of business on the agenda was the special use permit application submitted by Daniel Czernecki for property located at 96 North Lake Avenue. The applicant seeks a special use permit for an in-law apartment at this property. Daniel Czernecki was present. Chairman Steinbach asked whether there were any changes or additional submissions concerning the application. Mr. Czernecki stated there were no changes and no additional submissions. Chairman Steinbach inquired whether any Zoning Board members had questions concerning the application. Hearing none, the Zoning Board opened the public hearing on the special use permit application. The notice of public hearing was read into the record, having been published in the Troy Record, placed on the Town signboard, posted on the Town website (noting recent technical issues with the Town website), and mailed to owners of adjacent properties. Chairman Steinbach then opened the floor for the receipt of

public comment. There were no members of the public who wished to comment on the application. Chairman Steinbach wanted it confirmed on the record that the in-law apartment was used only by family members. Mr. Czernecki stated that the in-law apartment was for use by his father-in-law, who spends six months in New York and six months in Florida. Member Sclafani noted that the plans show no separate entrance for the in-law apartment from the exterior of the house, and that the only access to the in-law apartment is through the main entrance to the home. Chairman Steinbach again asked whether any members of the public wished to comment on the application. Hearing none, Member Sclafani made a motion to close the public hearing, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing closed on the Czernecki special use permit application. Chairman Steinbach noted that the Zoning Board should proceed to consider the application on its merits. Attorney Gilchrist stated that the application is subject to SEQRA review, and that the Zoning Board must review the environmental assessment form and application documents to make its SEQRA determination. Chairman Steinbach stated that based upon his review of the application documents and the environmental assessment form, it was his opinion that there were no potential significant adverse environmental impacts from the issuance of the special use permit in this case, and offered a motion to adopt a negative declaration under SEQRA. The motion was seconded by Member Clemente. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, the Zoning Board reviewed the considerations for a special use permit in this case. Upon review of the application materials, the Zoning Board members concurred that there were adequate transportation facilities, water supply, fire and police protection, and wastewater disposal services in connection with this property and the addition of the in-law apartment; that there was adequate parking in connection with the proposed in-law apartment; Member Clemente noted that the construction of the in-law apartment was done very well, and in all likelihood improved the value of the property and the neighborhood as a whole, and that the addition to the house was consistent with the general neighborhood character and constitutes a great

improvement to the neighborhood, with the remaining Zoning Board members concurring; that the use of the addition for an in-law apartment purpose would not result in any undue traffic congestion or create any traffic hazards, with Chairman Steinbach noting that there is already moderately heavy traffic on North Lake Avenue, but that this in-law apartment is going to be used on a seasonal basis. Chairman Steinbach concluded that the addition of one part-time resident at this location in the in-law apartment is not significant at all, that the property owner has made a significant investment in the property that fits into the overall character of the neighborhood, and that the addition of this part-time resident would not be noticeable at all. Member Schmidt felt it was significant that there was only one ingress/egress access to the house, and that the in-law apartment did not have a separate entrance to the exterior, but felt that the Zoning Board should limit the special use permit to an in-law apartment only and not allow any for-profit rental. The Zoning Board members concurred in that condition. Chairman Steinbach asked if there was any further discussion. Hearing none, Chairman Steinbach made a motion to approve the special use permit upon the condition that the apartment be used for in-law purposes only and is not approved for a for-profit rental unit. Member Sclafani seconded the motion subject to the stated condition. The motion was unanimously approved, and a special use permit granted subject to the stated condition. Chairman Steinbach directed the applicant to close out the Certificate of Occupancy process with the Town of Brunswick Building Department, and also stated that in the event the property owner requested a separate entrance or to convert the addition to a for-profit rental unit, the owner would need to reapply to the Town of Brunswick and seek a new special use permit.

There were two items of new business discussed.

The first item of new business discussed was an area variance application submitted by Christine and Michael Colucci for property located at 4 Plum Road. The applicant seeks to install a 16-foot by 20-foot deck from the rear of the house, in a location which requires a rear yard setback variance. The required rear yard setback is 50 feet at this location, and a 42-foot setback is proposed,

requiring a variance of 8 feet. Michael and Christine Colucci were present. Chairman Steinbach requested the applicant to generally review the application for the Zoning Board members. Mrs. Colucci stated that they are seeking to construct an attached deck to the rear of their house. Mrs. Colucci stated that she has spoken with the neighbor to the rear, and that they have no objection to the construction of the deck in the proposed location, and handed up a written letter from Anthony and Sarah Conyers, 16 Valley View Drive, stating that they have no opposition to the variance request. Chairman Steinbach received the written letter from the Conyers. The Zoning Board members generally concurred that the application materials were complete, with Chairman Steinbach confirming that the application fees had been paid. The Zoning Board concurred that the matter was complete for scheduling the public hearing. The public hearing on the Colucci area variance application will be held on September 19, 2016 at 6:00pm.

The second item of new business discussed was an area variance application submitted by Thomas Fitzgerald for property located at 8 Brook Hill Drive. Mr. Fitzgerald was in attendance. The application seeks a side yard setback variance. At this location, a side yard setback of 25 feet is required, and a setback variance allowing a 10.2-foot setback is requested, resulting in a 14.8-foot variance. Mr. Fitzgerald explained that a shed is already constructed and existing in this location on his lot, and that he had obtained a building permit for the installation of the shed at that location. However, as there is proposed construction on the lot adjacent to Mr. Fitzgerald, he had his survey confirmed in terms of his lot line, and only upon the supplemental survey did Mr. Fitzgerald learn that his original survey was not accurate and the builder had not placed the house on the building lot in the location which Mr. Fitzgerald thought it would be. Mr. Fitzgerald handed up a series of photographs depicting his lot, including the house and the shed location. Mr. Fitzgerald stated that he was unaware of the incorrect survey previously provided to him, had obtained a building permit to put the shed in a location based on the inaccurate survey, and that he was now seeking an after-the-fact variance based on his updated, correct survey. Chairman Steinbach asked whether Mr. Fitzgerald

consented to the Zoning Board members going out to the house and taking a look for themselves. Mr. Fitzgerald provided consent. The Zoning Board members generally concurred that the application materials were complete, with Chairman Steinbach confirming that the application fee had been paid. The Zoning Board scheduled a public hearing for the Fitzgerald area variance application, to be held at the September 19 meeting to commence at 6:15pm.

The index for the August 15, 2016 meeting is as follows:

1. Fuller - Area variances - Granted subject to condition
2. Wiley - Area variance - Granted subject to condition
3. Vickers - Area variance - Public hearing to be continued on September 19, 2016 at 6:30pm
4. Czernecki - Special use permit - Granted subject to condition
5. Colucci - Area variance - September 19, 2016 (public hearing to commence at 6:00pm)
6. Fitzgerald - Area variance - September 19, 2016 (public hearing to commence at 6:15pm).

The proposed agenda for the September 19, 2016 meeting currently is as follows:

1. Colucci - Area variance (public hearing to commence at 6:00pm)
2. Fitzgerald - Area variance (public hearing to commence at 6:15pm)
3. Vickers - Area variance (public hearing to continue at 6:30pm).