

Zoning Board of Appeals

TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS REGULAR MEETING HELD NOVEMBER 21, 2022

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, PATRICIA CURRAN, and JOHN MAINELLO III.

ABSENT was DARYL LOCKROW.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairperson Clemente reviewed the agenda for the meeting, as posted on the Town sign board and Town website. The draft minutes of the October 17, 2022 regular meeting were reviewed. There were no edits or corrections to be made. Chairperson Clemente made a motion to approve the minutes of the October 17, 2022 regular meeting without correction, which motion was seconded by Member Curran. The motion was unanimously approved, and the minutes of the October 17, 2022 regular meeting were approved.

The first item of business on the agenda was an area variance application submitted by Van Phung for property located at 42 Humiston Avenue. Van Phung and Denise Breen were present to review the application. The Notice of Public Hearing was read into the record by Attorney Gilchrist, noting that the Public Hearing Notice was published in the Eastwick Press, placed on the Town sign board, posted on the Town website, and mailed to the owners of all properties located within 300 feet of the project site. Chairperson Clemente asked Mr. Phung if there had been any changes to the application since the last Zoning Board meeting. Mr. Phung stated that there had been no changes to the application. Chairperson Clemente opened the public hearing on

the application. There were no public comments on the application. Chairperson Clemente asked Mr. Golden if there had been any written comments on the application, and Mr. Golden stated that the Brunswick Building Department had received one written comment via letter. Mr. Golden then read the written comment, from Antonietta Mazzariello of 50 Humiston Avenue, in full into the record, which included that the work started under the prior variance for this property that had been granted earlier by the Zoning Board had not yet been completed, noting that siding had not yet been put up on the structure, and that the already-approved work should be required to be completed first if the Zoning Board approves the current application. Chairperson Clemente reviewed the left-side setbacks for the structure, which were within the limits set by the Town, and asked the applicant to confirm that he is not seeking any setback relief. Mr. Phung confirmed that no setback relief is being requested. Chairperson Clemente stated that the area variance is for the size of the structure only, then reviewed the square footage being currently requested for the lean-to and deck, which is 3,826 square feet, and the square footage of the structure previously approved by the Zoning Board, which was 2,940 square feet. Mr. Golden stated that the applicant had actually gone over what was approved, with the structure being 2,946 square feet. Chairperson Clemente stated that the difference between the previous approval and what is currently being proposed is approximately 880 square feet, which is due to the 16 x 30 lean-to and the 16 x 25 deck. Chairperson Clemente asked the applicant how the second-story deck would be accessed. Mr. Phung stated that there would be indoor and outdoor staircases to access the deck. Mr. Golden stated that the two staircases were within the Building Department purview, and that both staircases complied with Building Code requirements. Member Curran stated that the second floor of the accessory structure had been previously approved for storage space only, but will now be used to access the deck. Mr. Phung confirmed that the second floor will be used for access to the

deck, but that it would not be a change of use from the previously approved use of storage only as the second floor will now allow furniture on the deck to be brought in to the structure for storage during the winter or bad weather. Chairperson Clemente noted the one written letter received by the Town concerning the application was from the adjacent neighbor, and asked what was located between the applicant's property and the adjacent neighbor's property. Ms. Breen stated that there was nothing between the two properties except the neighbor's yard. Mr. Golden noted that the neighbor's property is at a higher elevation than the applicant's property. Member Mainello asked when the work on the property would be completed if approved. Mr. Phung stated that the work would be done as soon as possible. Mr. Phung addressed not having yet put up siding on the structure, stating that he was waiting for approval to build the lean-to onto the structure after which the siding would be installed, and that it has been difficult to find workers to help with construction both during and after the Covid-19 pandemic. Member Curran reviewed the history of the accessory structure, stating that cars, a trailer, and a boat had been stored there, that there were solar panels on the roof, and that an electric vehicle is parked and charged there. Member Curran stated that the applicant wanted to add a lean-to for the boat, but that the boat was initially intended to be inside the accessory structure. Mr. Phung confirmed the approved uses for the structure, but stated that he needed more room due to the extended time he will need to complete the significant work he is doing on a camper within the accessory structure. Member Curran noted that work on the camper will be temporary, so the larger accessory structure would only be necessary for a short period of time. Mr. Phung stated that the work he is doing on the camper is extensive and that it will likely take 4-5 years to complete, so the larger structure will be necessary for years, not weeks or months. Mr. Phung also stated that the lean-to is needed for long-term boat storage. Member Mainello asked the applicant if he would be willing to install visual screening between his property

and his neighbor's property. Mr. Phung stated that siding along the lean-to will shield the boat and add an overall better look to the structure. Chairperson Clemente asked the other Zoning Board members if there were any further questions or comments on the application and there were none. Chairperson Clemente made a motion to close the public hearing, which was seconded by Member Mainello. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated that the project is a Type II under SEQRA, which does not require any further SEQRA review. Chairperson Clemente reiterated that the area variance was for the square footage of the accessory structure. The Zoning Board then reviewed the elements for consideration on the area variance application. 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, Chairperson Clemente noted that the letter received by the Town from the adjacent neighbor raises questions about the length of construction for the project. Member Curran also noted that some houses in the neighborhood have small sheds and/or garages, and that there is no other home in the neighborhood that has an accessory structure of this size. As to whether a feasible alternative is available, Member Curran stated that the applicant provided no other information on other options. Chairperson Clemente stated that the accessory structure is already there, so there is no other option for making an addition to the already-existing accessory structure. Mr. Golden noted that the applicant's property is 2.73 total acres, but that it is partly in Brunswick and partly in Troy. Mr. Golden also noted that the applicant did a good job with the swale around the accessory structure. As to whether the requested variance is substantial, Chairperson Clemente noted that the lot is 2.73 acres, the accessory structure is currently 2,946 square feet, and the applicant is proposing to build-out the structure to 3,826 square feet. Member Curran stated that she felt the variance is substantial due to increasing the square footage from the previous approval. As to whether the variance would

create an adverse environmental or physical impact, Member Curran stated it would have no impact as it would not affect the soil, air, or water on the property. As to whether the difficulty giving rise to the need for the variance is self-created, Chairperson Clemente stated that it was. Chairperson Clemente asked the Zoning Board members if there were any further questions. Member Mainello stated that adding screening and expediting construction should be two conditions on the application. Attorney Gilchrist stated that requiring screening was within the discretion of the Zoning Board, but that as long as the applicant began construction within one year of approval, there was no time limit applicable to the area variance. The time limit under the building permit is a Building Department matter. Attorney Gilchrist also noted that the applicant was planning to incorporate new construction into the work previously approved by the Zoning Board, so requiring the already-approved work to be completed first may not even be possible. Chairperson Clemente made a motion to grant the area variance, subject to the condition that the applicant plant 5-foot-tall spruce trees along the property line between the applicant's property and the adjacent property at 50 Humiston Avenue to create a visual barrier, to be within the final discretion of the Building Department. Member Mainello seconded the motion. Three members voted in favor, and one against, and the area variance was granted subject to the stated condition. Chairperson Clemente directed the applicant to continue to coordinate with the Building Department on this matter.

The Zoning Board then discussed three items of new business. The first item of new business was an area variance application submitted by Rhonda Parker for property located at 836 Tamarac Road. Rhonda Parker was present to review the application. Ms. Parker stated that she was seeking the area variance for an accessory structure, a pole barn, that was to be 3,888 square feet where accessory structures are only allowed to be 1,500 square feet. Ms. Parker stated that the

barn would be used for storing tools and equipment and as a workshop, that there would be between 80-100 feet between her house and the barn, and that the barn would be accessed by an already-constructed driveway that splits off the main driveway to her house. Ms. Parker also stated that she would be removing some trees to build the barn, that it would be one-story tall, and that she did not believe there was a height restriction. Mr. Golden confirmed that there is no height issue regarding the proposed accessory structure. Member Curran asked about Part 1 of the Short Environmental Assessment Form (EAF), asking if question 4, concerning land uses on or near the project site, should have "Agriculture" checked. Ms. Parker confirmed that it should, and the Short EAF was amended. Member Curran also asked about question 9 of the Short EAF, concerning whether or not the project meets or exceeds NYS energy code requirements, asking why it had checked "yes". Ms. Parker stated that was an error also and should have been checked "no", and the Short EAF was amended. Chairperson Clemente asked if the project was not approved, what alternatives there would be for storage of the tools and equipment. Ms. Parker stated that there was no alternative and that the equipment would need to be stored outside her house in the open. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for December 19, 2022 at 6:00pm.

The second item of new business was an area variance application submitted by Ryan Ashe for property located at 218 South Lake Avenue. Jamie Ashe was present to review the application. Mrs. Ashe stated that the application was for front yard setback and side yard setback variances for a shed on the property. Mrs. Ashe stated that she and her husband purchased their home in May 2022, that they have purchased a shed as there is no garage or storage on the property and their basement floods, and that the side yard is the only place the shed can be placed due to the backyard regularly flooding as well. Chairperson Clemente asked how the shed would be accessed. Mrs.

Ashe stated that there are doors on the front of the shed. The Zoning Board reviewed the application for completeness, noting that a 60-foot front yard setback is required and a 26-foot setback is being proposed, and that a 15-foot side yard setback is required and a 4-foot setback is being proposed. Member Curran asked if the lot is a non-conforming lot. Mr. Golden confirmed that it was an existing non-conforming lot, stating that there was a front setback issue as the house's porch was too close to the road. Chairperson Clemente noted that pictures included with the application show fill encroaching on the adjacent parcel. Mrs. Ashe stated that there was no encroachment issue as the survey provided to the Building Department is wrong, that she is in the process of hiring a surveyor to complete a new survey of the property, and that the earliest a surveyor is available is January 2023. Attorney Gilchrist considered the fill on the property to be relevant, and stated that the Zoning Board should have information on the fill on the property for consideration of the application. Mrs. Ashe stated that the application was for the shed on the property, not fill, that the fill was not relevant to the application, and that she would like to speak to her attorney on the matter. Attorney Gilchrist stated that she was entitled to retain an attorney on the matter. The Zoning Board tabled the application until Mrs. Ashe submitted her new survey of the property to the Zoning Board. This matter is tentatively placed on the agenda for the regular January meeting.

The third item of business on the agenda was a sign variance application submitted by AJ Signs for property located at 664 Hoosick Road. Tom Wheeler of AJ Signs was present to review the application. Mr. Wheeler stated that the signs were for the Wendy's fast-food restaurant currently being built on the property, that 7 signs were being proposed, that 2 signs are allowed under the Brunswick Zoning Code, and that the variance was for 5 signs. Mr. Wheeler stated that the Wendy's will be a typical fast-food restaurant like the KFC on the other side of the Planet

Fitness gym and the Taco Bell further down the road. Mr. Wheeler then reviewed all 7 signs being proposed, stating that the 5 signs for which the variance is sought are a pre-sale menu board, an order board in the drive-thru, a “thank you” sign with the Wendy’s logo on it, and signs on either side of the building. Mr. Golden stated that 300 square feet is allowed for all signs on a property and that the 7 signs being proposed is well below that maximum. Chairperson Clemente asked if the application for the 5 signs was not approved, what alternatives were available. Mr. Wheeler stated that alternatives would be difficult as many of the proposed signs are directional signs, that signs are needed on the side of the building and the drive-thru, but that the “thank you” sign could be eliminated. Mr. Golden noted that the signs would be partially obstructed when traveling from the east due to the car wash on the adjacent parcel. Member Curran asked if the signs on the sides of the building would be illuminated. Mr. Wheeler confirmed that those signs would be illuminated during business hours. Chairperson Clemente asked what the restaurant’s business hours would be. Mr. Wheeler stated that he did not know, but would find out. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for December 19, 2022 at 6:15pm.

One item of old business was discussed. Mr. Golden made the Zoning Board members aware that a zoning appeal had been filed by the owner of 63 Indian Creek Lane. Attorney Gilchrist confirmed that the appeal had been filed, stated that he had a conflict of interest as he worked with the Building Department previously on the matter, and advised the Zoning Board to seek outside counsel for legal advice on the appeal. The Zoning Board authorized Attorney Gilchrist to alert the Town Board of its need for separate counsel on the zoning appeal and begin the process of hiring that outside counsel.

The index for the November 21, 2022 regular meeting is as follows:

1. Phung – area variance (approved with condition).
2. Parker – area variance (December 19, 2022).
3. Ashe – area variance (adjourned).
4. AJ Signs – sign variance (December 19, 2022).
5. Bulson – zoning appeal.

The proposed agenda for the December 19, 2022 regular meeting is currently as follows:

1. Parker – area variance (public hearing to commence at 6:00pm).
2. AJ Signs – sign variance (public hearing to commence at 6:15pm).