

## **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 FEBRUARY 27, 2023**

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, PATRICIA CURRAN, JOHN MAINELLO III and 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 January 23, 2023 regular meeting were reviewed. There were no edits or corrections to be made. Chairperson Clemente made a motion to approve the minutes of the January 23, 2023 regular meeting without correction, which motion was seconded by Member Curran. The motion was unanimously approved, and the minutes of the January 23, 2023 regular meeting were approved.

The first item of business on the agenda was an application for two area variances submitted by William Meissner and Nicole Meissner for property located at 1 Diana Lane. William Meissner and Nicole Meissner were present to review the application. Chairperson Clemente asked the applicants if there had been any changes to the application since the last Zoning Board meeting. Mrs. Meissner stated that there had been no changes to the application. Chairperson Clemente asked the applicants to briefly review the application. Mrs. Meissner stated that the applicants were looking to build a pool on their property, that they were requesting two front setback variances due to the property being a corner lot, and that the proposed location of the pool was the only viable location due to topography constraints and the location of the septic system on the property. 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 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 he stated that there had been none, either by written letter or email. Chairperson Clemente asked the applicants what the height of the white fence surrounding the yard was. Mrs. Meissner stated that the fence was 6 feet high. Chairperson Clemente also noted that the picture of the property submitted with the application should be labelled a rendering of what the property will look like post-construction, rather than a rendering of the current conditions. There were no further questions from the Zoning Board. 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 noted that she and Member Curran had visited the property since the last Zoning Board meeting and thanked the applicants for allowing them access to the property. Chairperson Clemente stated that the project was a Type II action under SEQRA, which does not require any further SEQRA review. Chairperson Clemente also noted that the Town had received a letter from the Rensselaer County Bureau of Economic Development and Planning stating that the project will not have a major impact on County plans and that local consideration shall prevail. 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, Member Curran stated that it would not due to the pool replacing a previous pool located in the same spot, that there are pools on other properties in the

area, and that there will be a 6-foot tall fence for screening. Chairperson Clemente agreed, and stated that the pool will be placed an acceptable distance away from the applicants' neighbor's property line. As to whether a feasible alternative is available, Chairperson Clemente stated that the applicants had explored other locations on the property for the pool, but that the topographical constraints and the septic location precluded an alternative location. As to whether the requested variance is substantial, Chairperson Clemente noted that for both front setback variances, 60 feet of setback was required, and that the applicant was requesting 17 feet and 18 feet of setback for the variances. Chairperson Clemente also noted the uniqueness of the property, including an elevation incline off NYS Route 2, and the fence blocking the pool from neighboring properties, so that in this case the variance should not be considered substantial. As to whether the variance would create an adverse environmental or physical impact, Member Curran reiterated that the pool was to replace a previous pool located in the same spot, which had not resulted in a negative environmental impact, that there would be limited grading during construction, and that the applicants would not be removing any trees. As to whether the difficulty giving rise to the need for the variance is self-created, Chairperson Clemente stated that it was, but that it was not determinative in this case. Member Mainello made a motion to grant the two area variances, which was seconded by Member Lockrow. The motion was unanimously approved and the two area variances were granted. Chairperson Clemente directed the applicants to continue to coordinate with the Town Building Department on this matter.

The second item of business on the agenda was an application for two area variances submitted by David Wheeler for property located at 235 Town Office Road. David Wheeler was present to review the application. Chairperson Clemente asked the applicant if there had been any changes to the application since the last Zoning Board meeting. Mr. Wheeler stated that there had

been no changes to 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 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 he stated that there had been none, either by written letter or email. Chairperson Clemente noted that the proposed accessory structure would be 672 feet from Town Office Road and 70-75 feet from the house on the property. There were no questions from the Zoning Board. Member Lockrow made a motion to close the public hearing, which was seconded by Member Curran. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated that the project was a Type II action under SEQRA, which does not require any further SEQRA review. Chairperson Clemente also noted that the Town had received a letter from the Rensselaer County Bureau of Economic Development and Planning stating that the project will not have a major impact on County plans and that local consideration shall prevail. Chairperson Clemente noted that Mr. Wheeler had granted the Zoning Board access to the site and a tour of his property and thanked him for that. 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, Member Mainello stated that the accessory structure would be so far from Town Office Road that it would not be able to be seen by, or have an impact on, any neighboring properties. Chairperson Clemente agreed, adding that the accessory structure would be constructed in a manner consistent with the primary structure on the property. As to whether a feasible alternative is available, Member

Lockrow stated that the topography of site land and wetlands on the site severely limited the site and that there was therefore no available viable alternative location for the structure. As to whether the requested variance is substantial, Chairperson Clemente stated that regarding size, the accessory structure is proposed to be 2,400 square feet when only 1,500 square feet is allowed, that the parcel is 20 acres and heavily wooded, that construction would be well off Town Office Road and not near any neighbors, and that it should therefore not be considered substantial in this case. As to whether the variance would create an adverse environmental or physical impact, Member Mainello stated that there would not be any impact to the land or to any neighbors. As to whether the difficulty giving rise to the need for the variance is self-created, Member Mainello stated that it was, but that the size of the parcel was large, that the accessory structure would be consistent with the primary structure, and that this factor was not determinative in this case. Chairperson Clemente asked the Zoning Board if there were any further questions. Member Schmidt asked if there should be a condition that the accessory structure not be used for commercial purposes such as to run a business. Attorney Gilchrist noted that the property was in an R-25 zoning district, where commercial uses are not allowed, so he suggested that if there were to be a condition, that it be that the accessory structure cannot be used for any commercial purpose, consistent with the Town Zoning Law for an R-25 zoning district. Member Curran made a motion to grant the two area variances subject to the stated condition, which was seconded by Member Lockrow. The motion was unanimously approved and the area variances were granted subject to the stated condition. Chairperson Clemente directed the applicant to continue to coordinate with the Town Building Department on this matter.

The Zoning Board discussed two items of old business.

The first item of old business was an appeal submitted by Charles Bulson for property located at 63 Indian Creek Lane. Attorney Gilchrist recused himself due to having worked with the Town Building Department previously on this matter. Christopher Langlois, Esq., who is serving as special counsel to the Zoning Board for the appeal, joined the Zoning Board. Chairperson Clemente stated that at the December 19, 2022 Zoning Board meeting, the Zoning Board had requested that the appellant submit further information regarding the jurisdictional issues pertaining to this matter. Chairperson Clemente also noted that the Town had received the additional information on the afternoon of Thursday, February 23, in the form of an 8-page single-spaced letter and 54-page attachment, and that the Zoning Board acknowledges the receipt of that submission. Mr. Langlois then indicated that the Zoning Board members would require time to review the submission, and the matter should be placed on the Zoning Board's March meeting agenda. Mr. Langlois asked the Zoning Board members if they expected to be prepared to make a determination on whether or not the Zoning Board has jurisdiction regarding the appeal at the Zoning Board's March meeting, and the Zoning Board members stated that they felt a determination could be made at the March meeting. Robert Tietjen, the appellant's attorney, asked to confirm that no determination would be made at the current meeting. Chairperson Clemente confirmed that no determination would be made at the current meeting. Mr. Tietjen noted that the requested information had been submitted in compliance with the Zoning Board's schedule and that the appellant was under the impression that a determination was to be made at the present meeting. Mr. Langlois concurred that the information had been received timely, but that it was more extensive than the Zoning Board was expecting and that the Zoning Board members needed more time to review the submission thoroughly. Mark Miranda, the appellant's second attorney, asked which Zoning Board members had and had not yet reviewed the submission. Mr. Langlois

stated that that information was not necessary, and that the Zoning Board collectively was not prepared to act on the appeal at the current meeting. Mr. Miranda asked if the Zoning Board members had met privately immediately before the current public meeting. Mr. Langlois confirmed that he and the Zoning Board members had met immediately before the current meeting in a private attorney-client meeting. Mr. Miranda asked if there was a quorum at the private meeting. Mr. Langlois confirmed that there was a quorum, and that all five members of the Zoning Board had been present at the private meeting. Mr. Miranda asked if the private meeting had been recorded and if there would be minutes produced for the private meeting. Mr. Langlois stated that the private meeting was not recorded and that there would be no minutes produced from the meeting. Mr. Miranda asked if any notes were taken during the private meeting. Mr. Langlois stated that no notes were taken during the private meeting, and stated that he was not sure where Mr. Miranda was going with this line of questioning. Mr. Miranda asked if the Town Building Department had distributed the submission upon receiving it the previous Thursday. Mr. Langlois stated that that information was also not necessary in this matter, and reiterated that the Zoning Board members had been presented the submission before the current meeting and needed more time to review it. Mr. Miranda asked if the Zoning Board would act on the appeal at its March meeting. Mr. Langlois stated that that the was up to the Zoning Board, and noted that the Zoning Board members had previously stated that they expect to act on the jurisdictional issue at the March meeting. Mr. Miranda stated that the appellant would be submitting a further letter to the Zoning Board before the March meeting. This matter is placed on the March 20, 2023 agenda for further discussion.

The second item of old business was an application for two area variances submitted by Ryan Ashe for property located at 218 South Lake Avenue. Ryan Ashe and Jamie Ashe were

present to review the application. Mrs. Ashe stated that they were seeking the two area variances for the location of a shed on their property. Mrs. Ashe stated that fill has already been placed on the property for a shed, that the shed is needed for storage due to their basement regularly flooding, and that the location proposed for the shed was chosen due to the lot being limited in size and the location of the septic system on the property. Chairperson Clemente noted that the applicants were seeking two setback variances for a pre-existing nonconforming lot. Chairperson Clemente stated that since the applicants had last been before the Zoning Board at its November 21, 2022 meeting, a new survey of the property had been submitted, and that the only business before the Zoning Board was consideration of the two area variances, and no other matters concerning the property. Chairperson Clemente stated that the application needed to be evaluated for completeness for purposes of a public hearing, asking if the new survey was the same as the survey previously submitted in November in connection with this matter. Mrs. Ashe stated that the new survey was not the same as the first survey. Attorney Gilchrist stated that it was not within the Zoning Board's jurisdiction to determine which survey was correct, and that all information submitted should be considered part of the application, which will include both surveys. Chairperson Clemente stated that it should be clarified that the applicant is seeking two front setback variances, not one front setback variance and one side setback variance. Upon reviewing the application and site map, Chairperson Clemente rescinded the clarification, stating that two front yard setback variances are being sought due to the property being a corner lot. Mrs. Ashe stated that she had taken video of her basement flooding recently and asked if that could be submitted to the Town as well. Mr. Golden stated that the applicants could email the video to him or copy it onto a flashdrive and deliver it to him at the Town Office and it would be added to the application materials. Chairperson



Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for March 20, 2023 at 6:00pm.

The Zoning Board discussed two items of new business.

The first item of new business was an area variance application submitted by Donald Fane for property located 1 Larry Court. Mark Danskin, land surveyor on the project, and Donald Fane were present to review the application. Mr. Danskin stated that the applicant was seeking an addition to the structure on the property, but that he was looking to build up rather than out by building a second floor onto the structure. Attorney Gilchrist clarified that the applicant was seeking an area variance for expanding an existing nonconforming structure. Mr. Golden noted that the structure was currently not in compliance for setback from Larry Court. Attorney Gilchrist stated that the setbacks are a current nonconforming condition and are not at issue in the current application since the applicant is not decreasing any existing setback distances, rather only adding a second floor within the existing building footprint. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for March 20, 2023 at 6:15pm.

The second item of new business was an application for two area variances submitted by Chris Halse for property located at 665 Tamarac Road. Chris Halse was present to review the application. Mr. Halse stated that he was looking to build a barn on his property and that he was seeking two area variances, for the size of an accessory structure and a side yard setback variance. Mr. Halse stated that wetlands at the back of his property limited where he could build the barn, then reviewed the site map, pointing out the wetlands and a creek at the back of the property. Chairperson Clemente asked what type of structure was being proposed and for what purpose. Mr. Halse stated that he was looking to build a barn to store equipment. Member Curran asked what

the size of the house on the property was. Mr. Halse stated that his house was approximately 2,200 square feet. Member Curran asked if the barn would be one story, and Mr. Halse confirmed that it would be. Member Schmidt asked if the proposed size of the barn could be reduced. Mr. Halse stated that it could, but that it would then not hold all the equipment he is looking to store and he would need to build a second accessory structure. Mr. Halse stated that his property is limited in where he can place an accessory structure due to the wetlands and creek at the back of the property, and stated that NYS DEC had just recently visited his property and added to the boundary of those wetlands, reducing the size of the buildable area on his property. Mr. Halse also stated that a well on the property limits where he could build an accessory structure. Chairperson Clemente asked if the applicant could submit a drawing of what the proposed barn would look like post-construction. Mr. Halse stated that he would have a drawing made and submit it to the Zoning Board. Chairperson Clemente asked if the Zoning Board members had permission to visit the property, and Mr. Halse stated that the Zoning Board members had permission. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for March 20, 2023 at 6:30pm.

The index for the February 27, 2023 regular meeting is as follows:

1. Meissner – area variances (approved).
2. Wheeler – area variances (approved with condition).
3. Bulson – appeal (March 20, 2023).
4. Ashe – area variances (March 20, 2023).
5. Fane – area variance (March 20, 2023).
6. Halse – area variances (March 20, 2023).

The proposed agenda for the March 20, 2023 regular meeting is as follows:

1. Ashe – area variances (public hearing to commence at 6:00pm).
2. Fane – area variance (public hearing to commence at 6:15pm).
3. Halse – area variances (public hearing to commence at 6:30pm).
4. Bulson – appeal.