

## **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 MARCH 20, 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 February 27, 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 February 27, 2023 regular meeting without correction, which was seconded by Member Curran. The motion was unanimously approved, and the minutes of the February 27, 2023 regular meeting were approved.

The first item of business on the agenda 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. Chairperson Clemente asked the applicant if there had been any changes made to the application since the last Zoning Board meeting. Mrs. Ashe stated that there had been no changes made to the application. Mrs. Ashe stated that she and her husband were seeking the area variances for a shed currently located on their property in order to keep it in its current location. Mrs. Ashe stated that the current location was the only possible location for the shed due to existing and increasing flooding on the property, and that she had taken video evidence of the water level on the property that could be submitted to the Zoning Board if

necessary. Mrs. Ashe also handed up a letter to the Zoning Board from a neighbor who could not attend the public hearing to be entered into the record. 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. Arthur Blair and Constance Blair, both of 32 Oxford Road, stated that they were next door neighbors of the Ashes. Mr. Blair stated that the Ashes were currently encroaching on their property, that there was no flooding on the adjacent property for the 25 years they had lived there, only beginning after the Ashes bought the property, and that the flooding must be due to the addition of fill to the property and landscaping by the Ashes. Mr. Blair also stated that there are alternate locations for the shed on the property. Mrs. Blair stated that the Ashes have excavated near the property line, that she brought her concerns about work being done so close to the property line to Mr. Ashe, and that work ultimately crossed the property line, which was ignored by the Ashes. Mrs. Blair also stated that the Ashes had dropped gravel on her and her husband's property, that the Ashes had left cut trees and destroyed shrubbery in their backyard, which was an eyesore, and that they were encroaching to make their own lot look larger. Mr. Blair stated that they had their own survey of the property done, which shows the Ashes encroaching on their property. Mr. Blair stated that drainage from a sump pump operated by the Ashes, which the Ashes state is a major source of water causing the flooding on their property, could be better managed, and that the shed is both too large for the lot and too close to South Lake Avenue, which already has seen major accidents. Mr. Blair also stated that he had discussed the matter with Mr. Golden and Bill Bradley in the Town Water Department when the shed was initially brought to the property, and that he believed the Ashes were trying to rectify a zoning issue. Amanda Talham,

who lives on the other side of the lot owned by the Ashes, stated that the shed on their property looks good, that the shed is not too close to South Lake Avenue, that the area has always been wet, that there has been no environmental impact due to the placement of the shed, and that there is no other place on the lot to put the shed. Jeremy Navarette and Audrey Wagner, of 210 South Lake Avenue, agreed that there is no other place on the lot for the shed, that the yard on the lot is always wet, that there are no environmental impacts from the shed, and that they had no problem at all with the shed due to it just being used to store tools. There were no further comments. Chairperson Clemente asked Attorney Gilchrist if he would read the letter submitted by Mrs. Ashe to the audience. Attorney Gilchrist read the letter, from Drew Prescott and Stacy Prescott, of 211 South Lake Avenue, which was dated March 20, 2023 and was in favor of granting the area variances. Chairperson Clemente asked the applicant about the vegetation on their property, specifically in the southeast corner of the lot. Mrs. Ashe stated that there is some brush at the back of the property and that the brush separates the Ashe and Blair properties. Mrs. Ashe also stated that the only issue before the Zoning Board is the application for two area variances, not a potential encroachment issue. Chairperson Clemente confirmed that only the area variances were currently before the Zoning Board, not any encroachment issue. Mrs. Ashe stated that she was not aware of any car accidents on South Lake Avenue near their property, and that while the Blair property had previously been well-maintained, it was now overgrown. Mr. Ashe stated that there is a weeping willow tree behind their house, that a branch from the tree broke off last year onto the Blair lot, and he will be removing the branch as soon as possible. Mrs. Ashe stated that their house is closer to South Lake Avenue than the shed is, that they are just looking to store tools and equipment in the shed, that the shed is not bigger than necessary for the tools and equipment they are looking to store, and that there is not any available location on the lot to build a garage for the tools and

equipment. Chairperson Clemente asked if the shed was 10-feet by 16-feet, and Mrs. Ashe confirmed that it was. Mr. Ashe stated that the septic system on the property also limited where the shed could be located. Mrs. Ashe reiterated that there was no other place on the property to put the shed, and that the sump pump and pipe that is causing the flooding of their yard and basement was there when they purchased the house. Mr. Ashe stated that the wet season in the spring creates a lot of water, but there would be less water and flooding in the summer. Attorney Gilchrist reiterated that the matter before the Zoning Board was not an encroachment issue, but whether the variances being sought by the applicants were substantial, and that the lot line location was relevant to that factor. Member Mainello made a motion to close the public hearing, which was seconded by Member Lockrow. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated that the application seeks area variances for a single-family residence, and constitutes a Type II action under SEQRA, which does not require any further SEQRA review. 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 stated that the shed was not out of character in the neighborhood as other homes have accessory structures, that it was a well-built shed, and that Mr. Ashe had stated that he would move the broken tree branch current on the Blair lot. As to whether a feasible alternative is available, Member Curran stated that there was no feasible alternative location due to the small size of the yard, that the lot is a corner lot and an existing nonconforming lot, the location of a nearby creek, and a limited dry area on the property. As to whether the requested variance is substantial, Chairperson Clemente noted that the applicant is seeking a 34-foot front yard setback and a 10-foot front yard setback, that two front yard setbacks were needed as the property was a corner lot,

and that the lot was located in an R-25 residential zoning district. Member Mainello stated that the variances were substantial, but that the small size of the lot, which was an existing nonconforming lot, limited where the shed could be placed on the lot. As to whether the variance would create an adverse environmental or physical impact, Chairperson Clemente stated that there would be no environmental impacts from the shed. As to whether the difficulty giving rise to the need for the variance is self-created, Chairperson Clemente stated that it was, as the applicants wanted to locate the shed on a small nonconforming lot, but that this factor was not determinative in this case. 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 asked if there were any further questions from the Zoning Board members, and there were not. Member Schmidt made a motion to grant the two area variances, which was seconded by Member Mainello. The motion was unanimously approved and the two area variances were granted. Chairperson Clemente directed the applicant to continue working with the Town Building Department on this matter.

The second item of business on the agenda was an area variance application submitted by Donald Fane for property located at 1 Larry Court. Mark Danskin, land surveyor on the project, and Mr. Fane's son were present to review the application. Chairperson Clemente asked the applicant if there had been any changes made to the application since the last Zoning Board meeting, and asked the applicant to briefly review the application. Mr. Danskin stated that there had been no changes to the application since the last Zoning Board meeting, that the building on the property is an existing nonconforming structure, that the applicant was seeking to add a second floor to the structure, and that the applicant was looking to build up, not out, meaning there would

be no increase in the building's footprint. 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. There were no questions from the Zoning Board. Chairperson Clemente 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 application seeks an area variance for a single-family residence, and constitutes 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, Chairperson Clemente stated that the application is to add a second floor to a 37-foot by 34-foot one-story house, which would not be out of character in the neighborhood. As to whether a feasible alternative is available, Member Curran stated that there was not as the lot was already a small nonconforming lot, meaning that a variance is legally required to make any structural additions to the house. As to whether the requested variance is substantial, Member Mainello stated that it was not as the applicant was only seeking to add a second floor and that the house would not be moving any closer to any lot lines. As to whether the

variance would create an adverse environmental or physical impact, Member Lockrow stated that it would not as there would be no digging or excavation. As to whether the difficulty giving rise to the need for the variance is self-created, Chairperson Clemente noted that the house was built on the lot in 1955, before the Town had any zoning laws, meaning that the house pre-dated any zoning restrictions and the need for a variance should not in this case be viewed as self-created. Chairperson Clemente asked if there were any further questions from the Zoning Board members, and there were not. Member Lockrow made a motion to grant the area variance, which was seconded by Member Curran. The motion was unanimously approved and the area variance was granted. Chairperson Clemente directed the applicant to continue working with the Town Building Department on this matter.

The third item of business on the agenda 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. Chairperson Clemente asked the applicant if there had been any changes made to the application since the last Zoning Board meeting, and asked the applicant to briefly review the application. Mr. Halse stated that there had been no changes to the application since the last Zoning Board meeting, that he was looking to build a garage on his property, and that the proposed location of the garage was due to constraints from wetlands and the locations of his house and driveway. Mr. Halse also stated that he was requesting a variance for the size of the accessory structure. 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 applicant had submitted a drawing of the proposed accessory structure, which had been requested at the last Zoning Board meeting. Member Curran asked about the distances and elevations on the drawing, and Mr. Halse reviewed the drawing for the Zoning Board. Chairperson Clemente asked if there would be any commercial use for the accessory structure. Mr. Halse stated that while he may use the structure as a home office in the future, he only currently intended to use the structure for storage. Attorney Gilchrist noted that the application only listed storage of equipment as an intended use for the structure, and that if there were to be additional uses requested in the future, they would need to be reviewed by the Town Building Department. Member Curran asked if the structure could be moved any further from the lot line. Mr. Halse stated that it would technically be possible, but that the location of his driveway would need to be moved as a result, which could result in snowplowing issues and move the driveway closer to an accessory structure on the adjacent lot. Chairperson Clemente asked if it would be possible to move the structure while maintaining the 5-foot setback area. Mr. Halse stated that his intention was to have minimal maintenance between the structure and the property line, and that there would be an overhang over the 5 feet between the structure and the property line. Member Curran asked what the height of the structure would be. Mr. Halse stated that the structure would be 20 feet in height. Member Curran asked if there would be a second floor for the structure and any stairs. Mr. Halse stated that while there may be a loft for storage, there would be no second floor, and there would be no stairs inside or outside the structure. Chairperson Clemente stated that a minimum variance was necessary, and that the Zoning Board must grant a minimum variance weighed against the overall zoning plan under the Brunswick Zoning Law, and noted that a 5-foot setback from the lot line had been requested, but that the applicant had stated that a 10-foot setback

from the lot line could work. Chairperson Clemente made a motion to close the public hearing, which was seconded by Member Lockrow. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated 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 also noted that the application seeks area variances for a single-family residence, and constitutes a Type II action under SEQRA, which does not require any further SEQRA review. 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 stated that the structure could be considered out-of-character for the immediate neighborhood, but that the homes in this immediate neighborhood were only constructed in 2008, making it a new neighborhood, that the applicant's property is abutted by Herrington Farms, which has many barns, that there is an interesting mix of uses in the neighborhood, and that ultimately there would not be an undesirable change to the neighborhood. As to whether a feasible alternative is available, Member Mainello stated that there was not a lot of available buildable area on the property due to the wetlands. As to whether the requested variance is substantial, Chairperson Clemente stated that the applicant was requesting a variance for a 6,000 square foot structure, where only 1,500 square feet is allowed, as well as a setback variance. Chairperson Clemente stated that in relation to the size of the lot, and other uses in the neighborhood, the variance for the size of the accessory structure was not substantial. As to whether the variance would create an adverse environmental or physical impact, Chairperson Clemente stated that there would be no environmental impacts. As to whether the difficulty giving rise to the need for the variance is self-created, Member

Lockrow stated that it was due to the applicant wanting to build the garage in his preferred location, but that there were limitations to the buildable area on the lot for an accessory structure. Chairperson Clemente asked if there were any further questions from the Zoning Board members. Member Schmidt stated that 5 feet was not enough distance to the property line, and that 10 feet would be more appropriate, noting that only 5 feet of distance could result in damage to the adjacent property during construction. Member Mainello agreed. Member Schmidt made a motion to grant the area variance for size of the accessory structure, and to grant a side yard setback area variance for a 10-foot setback from the lot line, which was seconded by Member Mainello. The motion was unanimously approved and the area variance for size was granted, and the area variance for setback was granted to the extent of allowing a 10-foot setback from the lot line. Chairperson Clemente directed the applicant to continue working with the Town Building Department on this matter.

The fourth item of business on the agenda was an appeal submitted by Charles Bulson for property located at 63 Indian Creek Lane. Attorney Gilchrist recused himself from this matter. Christopher Langlois, Esq., who is serving as special counsel to the Zoning Board for the appeal, joined the Zoning Board. Member Curran stated that the applicant had requested she recuse herself from the appeal, and that even though there was no conflict of interest or requirement to recuse, that she would voluntarily recuse herself from the matter. Member Curran left the meeting room. Chairperson Clemente stated that the Zoning Board had received a letter from the applicant's attorneys dated March 14, 2023. Chairperson Clemente stated that the issue facing the Zoning Board was whether the Zoning Board had jurisdiction in the matter, and if so, whether the appeal was timely, and if so, the Zoning Board could schedule a public hearing on the appeal. Chairperson Clemente stated that based on the Zoning Board's jurisdiction and the review of the record, since

there was no decision made in this matter by the Town Building Department, there is no decision or determination from which an appeal could be taken, and therefore the Zoning Board did not have jurisdiction. Chairperson Clemente then opened the discussion to the other Zoning Board members. Member Schmidt stated that the law is written to say that if there is no decision by a Building Department, then there is nothing to appeal, and that the law should be applied. Member Mainello and Member Lockrow agreed. Chairperson Clemente stated that Mr. Golden, the Town Code Enforcement Officer, has not issued any determination on the applicant's second building permit application, that the Zoning Board only has jurisdiction to review determinations of the Code Enforcement Officer, and since no determination has been made, the Zoning Board has no jurisdiction in this matter. Chairperson Clemente also stated that there were no court cases found by Mr. Langlois or the applicant's attorneys supporting the idea of the Zoning Board having jurisdiction when no determination has been made by a Code Enforcement Officer. Mr. Langlois stated that nothing has been identified in the New York Town Law, or any case law, finding that a lack of a determination by a Code Enforcement Officer constitutes a constructive denial, which the applicant has argued in the appeal, and concurred with Chairperson Clemente that the Zoning Board has only appellate jurisdiction to review a decision or determination. Robert Tietjen, the appellant's attorney, asked if he could be heard by the Zoning Board. Mr. Langlois stated that he could not as it was not a public hearing. Mr. Tietjen asked if Mr. Golden could address why he had not issued a determination on the applicant's second building permit. Mr. Langlois stated that the lack of a determination was not the issue currently before the Zoning Board. Mr. Tietjen stated that the applicant had filed an application for a building permit and that Mr. Golden has refused to make a determination, and now the Zoning Board has refused to hear an appeal on that lack of a determination, and asked what remedies his client had left. Mr. Langlois addressed the Zoning

Board, and stated that a vote of the Board would be required to dismiss the appeal. Member Mainello made a motion to dismiss the appeal, which was seconded by Member Schmidt. The motion was unanimously approved and the appeal was dismissed. Mr. Langlois stated that he would draft a written decision dismissing the appeal, that the draft decision would be ready to review at the Zoning Board's April meeting, and that once approved, the written decision would be filed in the office of the Town Clerk. Mr. Tietjen requested that an explanation from Mr. Golden as to why he has not issued a determination on the applicant's building permit be included in the written decision, arguing that the situation cannot be left in Kafka land, and that his client should not be left without a remedy. Mr. Langlois stated that this matter is all set for this meeting, and the matter will be on the April meeting agenda for review of the written decision.

Member Curran and Attorney Gilchrist returned to the Zoning Board for the continuation of the meeting.

The Zoning Board discussed one item of old business.

The one item of old business was an application for area variances submitted by Changing Visions of Energy (CVE North America, Inc.) for property located off Belair Lane. Carson Weinand, Senior Project Developer for Changing Visions of Energy, was present for the applicant. Chairperson Clemente stated that an issue had arisen at a pre-construction meeting on the project concerning the number of utility poles approved by the Zoning Board for the project. Chairperson Clemente noted that the application listed six utility poles, and that six poles had been discussed at Zoning Board meetings in February, March, and April 2022; however, Mr. Weinand stated at the May 16, 2022 meeting that the applicant was requesting five utility poles, and that the true number of approved utility poles must be determined. Mr. Weinand stated that he had misspoken at the May 16, 2022 meeting, and that the true number of utility poles sought by the applicant was

six. Mr. Weinand also stated that the site plan application and site map both listed six poles, that the area variance application requested six poles and had not been amended at any time, and that the New York State standard for this type of solar project is six utility poles. Mr. Weinand confirmed that he had misspoken at the May 16, 2022 meeting. Chairperson Clemente stated that the record is ambiguous and must be clarified. Attorney Gilchrist reviewed the record, the application, and previous Zoning Board meeting minutes, noting that it did appear that Mr. Weinand did misspeak at the May 16 meeting as the written record had requested the variances for six utility poles. Member Curran made a motion to clarify and confirm that the area variance for the above-ground utility poles at Belair Lane was for six utility poles, which Member Lockrow seconded. The motion was unanimously approved and record was clarified that the area variance was for six above-ground utility poles.

The Zoning Board discussed one item of new business.

The one item of new business was an application for two sign variances submitted by Form and Forge/Thomas Dingley in connection with the ACE Hardware store located at 831 Hoosick Road. Mr. Golden reviewed the application, stating that it was for a freestanding sign which will include both a fixed sign and an electronic sign. Member Curran noted that the location already had variances for a total of seven signs. Mr. Golden stated that the applicant was seeking to expand one existing freestanding sign, and to add an LED electronic signboard to the existing freestanding sign. Chairperson Clemente stated that she had questions on the application, but that the applicant was not present and that she was therefore not sure if the application could be deemed complete. Chairperson Clemente asked if a variance was required for the size of the freestanding sign the applicant was looking to expand. Mr. Golden stated that the freestanding sign is proposed to be 37 square feet on each side, where 35 square feet is allowed. Member Curran asked if a variance

would be required for the total square footage of all signs on the site. Mr. Golden stated that a variance for total square footage would not be required as even with the expanded freestanding sign, including the electronic sign, all signs would still total less than 300 square feet, which is what is allowable under the Town Sign Law. Chairperson Clemente asked if the Zoning Board members thought there was enough information to schedule a public hearing. The Zoning Board members stated that there was enough information. A public hearing on this application is scheduled for April 17, 2023 at 6:00pm.

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

1. Ashe – area variances (approved).
2. Fane – area variance (approved).
3. Halse – area variances (approved with condition).
4. Bulson – appeal (dismissed; written decision to be reviewed at April meeting).
5. Changing Visions of Energy – area variance (clarified and confirmed).
6. Dingley – sign variances (April 17, 2023).

The proposed agenda for the April 17, 2023 regular meeting is as follows:

1. Dingley – sign variances (public hearing to commence at 6:00pm).
2. Bulson – appeal.