

## **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 SEPTEMBER 18, 2023**

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, PATRICIA CURRAN, and DARYL LOCKROW.

ABSENT was JOHN MAINELLO III.

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 August 21, 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 August 21, 2023 regular meeting without correction, which was seconded by Member Curran. The motion was unanimously approved, and the minutes of the August 21, 2023 regular meeting were approved.

Chairperson Clemente stated that the Zoning Board would review new business first.

The first item of new business was an area variance submitted by Adam Kohler for property located at 15 Greene Street. Adam Kohler, of Adeline Homes, was present to review the application. Mr. Kohler stated that he was seeking to build a single-family raised ranch house on the property, and that the proposed house did not meet the requirements for a structure in an R-9 residential zoning district due to the property being a substandard lot of approximately 6,000 square feet. Mr. Kohler also stated that he had included written authorization from the property owner to file the application and represent them in front of the Zoning Board with the application

materials. Chairperson Clemente asked if there were any setback issues. Mr. Kohler stated that there were not. Chairperson Clemente asked about the history of the parcel. Mr. Kohler stated that he was not sure if the parcel was subdivided from the adjacent lot, only that the parcel was currently vacant. Member Curran asked what the square footage of the proposed house would be. Mr. Kohler stated that the house would be approximately 2,000 square feet of floor area, it would be a 40-foot by 30-foot raised ranch home, and would have a front load garage as well. Mr. Kohler also stated that the lot was expected to be sold, but that the sale was contingent upon Zoning Board approval for the area variance. Chairperson Clemente asked if the Zoning Board members had permission to visit the property. Mr. Kohler 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 October 16, 2023 at 6:00pm.

The second item of new business was an area variance application submitted by Larry Mackey for property located at 444 Farm to Market Road. Larry Mackey was present to review the application. Member Schmidt recused himself from participation in the review of this application. Mr. Mackey stated that he was seeking to build a 40-foot by 60-foot pole barn for storage. Chairperson Clemente asked if the structure would meet all required setbacks. Mr. Mackey confirmed that it would meet all setbacks and only required a variance for the size of the structure. Chairperson Clemente asked if a rendering or drawing of the proposed structure had been provided. Mr. Mackey stated that he would be building a metal pole barn that would be tan or brown in color. Member Curran asked what the height of the structure would be. Mr. Mackey stated that the pole barn would be 20 feet tall at its peak. Member Curran asked if it would be one-story. Mr. Mackey confirmed that it would be one-story with no attic trusses. Member Curran stated that the Environmental Assessment Form (EAF) submitted with the application stated that

the structure would be built near wetlands, and asked where the wetlands were on the project site and how they would be affected. Mr. Mackey stated that he was not aware of any wetlands near the site of the structure and that it must have been an error. Attorney Gilchrist stated that the section of the EAF in question is usually filled in automatically by NYS DEC and referred to the entire parcel, not the site of the structure. Mr. Mackey reiterated that the structure would not touch any wetlands. Member Curran asked what the square footage of the house on the property was. Mr. Mackey stated that the house was approximately 2,300-2,400 square feet. Chairperson Clemente asked if the Zoning Board members had permission to visit the property. Mr. Mackey 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 October 16, 2023 at 6:15pm.

Member Schmidt returned to the meeting.

The Zoning Board then returned to its scheduled agenda.

The first item of business on the agenda was an appeal submitted by Charles Bulson for property located at 63 Indian Creek Lane. Robert Tietjen and Mark Miranda, attorneys for the appellant, and Charles Bulson were present. 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 and Mr. Golden recused themselves as well. Mr. Langlois stated that with Member Curran recusing herself and Member Mainello absent, there were still enough members present for a quorum and the public hearing on the application could proceed. Mr. Langlois stated that he was not sure if Member Mainello would be able to participate in the decision on the appeal due to being absent from the public hearing, and he would research the issue. Mr. Langlois stated that the appellant and his attorneys would present the appeal and

their legal positions first, the Town would present its legal position next, then members of the public would be allowed to comment. Mr. Tietjen presented the appeal to the Zoning Board, discussing the history of the appeal from 2017 to the present, the appellant's proposed use for the site, and the reasons why the appellant asserts that the Town Building Department was in error denying the building permit for the site. The appellant's written appeal is included in the record. Attorney Gilchrist stated that he had recused himself from representing the Zoning Board on the appeal due to working with the Building Department on the matter before the appeal was filed, but asked the Board's permission to present the fact record background of the matter, clarifying that Attorney Tom Cioffi would subsequently review the Town's legal position. The Zoning Board members consented to allowing Attorney Gilchrist to summarize the factual background of the matter. Attorney Gilchrist provided to the Zoning Board members, Mr. Langlois, and the appellant's attorneys copies of documents in an exhibition package, which included application documents, Planning Board minutes, and correspondence between the appellant and the Building Department. Attorney Gilchrist reviewed the exhibition package. Attorney Gilchrist also stated that neither he nor Attorney Cioffi had any participation in the preparation of a 2022 report written by the Building Department concerning the matter that is included in the exhibition package. Mr. Langlois noted that the document handed out by Attorney Gilchrist clarified that two separate applications had been submitted by the appellant in 2017, one a site plan application to the Planning Board and the second a building permit application to the Building Department, and inquired whether both applications were relevant to the Town's zoning analysis. Attorney Gilchrist stated that Attorney Cioffi would be better suited to explain that issue. Attorney Cioffi stated that he was the Town of Brunswick Town Attorney and was representing the Town Building Department on the matter. Attorney Cioffi handed out a memorandum detailing the Town's zoning

analysis on the matter to the Zoning Board members, Mr. Langlois, and the appellant's attorneys. Attorney Cioffi summarized the Town's legal position, specifically why the Building Department was correct in determining that an area variance is required in this case, and why the appellant's legal position concerning the need for an area variance was legally incorrect. Attorney Cioffi also confirmed that he had no participation with a 2022 report written by the Building Department concerning the matter that is included in the Town's exhibit package. Chairperson Clemente then opened the public hearing on the application. Rhonda Parker, of 836 Tamarac Road, stated that while she admired the appellant's entrepreneurial ambition, we should all play by the same rules; that she owns property next to the appellant; that she and her husband had previously applied for a variance for an accessory structure, which had been granted; that if the appellant was looking to build an accessory structure, then he should have just applied for a variance for the size of an accessory structure like she and her husband had to; that she grew up on and near farms; and that if the agricultural tourism use that the appellant described was pursued, then traffic and noise would increase in and around her property that she would not like. Mr. Tietjen asked to respond to Attorney Gilchrist and Attorney Cioffi, and the Zoning Board allowed him to respond. Mr. Tietjen stated that he and the appellant had not received the documents handed out by Attorney Gilchrist or Attorney Cioffi prior to the meeting. Mr. Tietjen raised arguments against several points made by Attorney Gilchrist and Attorney Cioffi, stating that the Town never made its zoning interpretation known previously and was now only coming up with its zoning analysis in order to retroactively justify its actions. Chairperson Clemente asked if the public hearing should be kept open or be closed. Mr. Langlois asked Mr. Tietjen if he would like the public hearing to be closed, or if he and the appellant would like the public hearing to remain open in order to respond to the Town's presentation. Mr. Tietjen, Mr. Miranda, and the appellant left the room to confer. A few

minutes later, Mr. Tietjen, Mr. Miranda and the appellant returned to the room and Mr. Tietjen stated that the appellant would like the public hearing to remain open for written responses until October 2, 2023. Mr. Langlois clarified that the public hearing could be closed, but that a written comment period could be established until October 2, and if the Zoning Board was inclined to approve that procedure, the 62-day period that the Zoning Board had to make a decision would start on October 2. Mr. Cioffi stated that the Town had no issue with keeping the period for the receipt of further written submissions open, stated that he was not aware of any procedural requirement to serve the Town's memorandum prior to the public hearing, and also clarified that the documents presented to the Zoning Board had been finalized only the previous day, and not making the documents available to the appellant before the public hearing was in no way malicious. Attorney Cioffi asked if the Town would also be allowed to make further written submissions to the Zoning Board. Mr. Langlois confirmed that the Town could submit written comments as well. Mr. Tietjen and Attorney Cioffi stated that they would send their written submissions both to the Town and to each other. Mr. Langlois asked the Zoning Board members if there were any further questions or comments. Member Schmidt asked if the Zoning Board members could visit the site. Mr. Langlois asked if visiting the site at this point was vital for making a determination on the appeal. Chairperson Clemente noted that there was an issue of where on the site the building was located, as the survey and site plan showed different locations. Mr. Langlois clarified that a determination on the need for an area variance concerning the size of the accessory structure was the only issue at hand. Member Schmidt stated that he would like to see the structure because a question had been raised as to whether the building was actually for agricultural purposes and as he is a farmer, he would know. Mr. Langlois stated that in this case, the Zoning Board members must judge the criteria of the Brunswick Zoning Law, not their own

criteria. The Zoning Board concluded that a site visit would not be necessary. Chairperson Clemente made a motion to close the public hearing, but allow written comments to be submitted until October 2, which was seconded by Member Schmidt. The motion was unanimously approved. This matter is placed on the October 16, 2023 agenda for further deliberation. The complete audio recording of the public hearing on the appeal of Charles Bulson is on file at the Town of Brunswick.

The index for the September 18, 2023 regular meeting is as follows:

1. Kohler – area variance (October 16, 2023).
2. Mackey – area variance (October 16, 2023).
3. Bulson – appeal (October 16, 2023).

The proposed agenda for the October 16, 2023 regular meeting is as follows:

1. Kohler – area variance (public hearing to commence at 6:00pm).
2. Mackey – area variance (public hearing to commence at 6:15pm).
3. Bulson – appeal.