

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 20, 2023

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

ABSENT was DARYL LOCKROW.

ALSO PRESENT was MICHAEL McDONALD, 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 16, 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 October 16, 2023 regular meeting without correction, which was seconded by Member Curran. The motion was unanimously approved, and the minutes of the October 16, 2023 regular meeting were approved.

The draft minutes of the October 30, 2023 special meeting were reviewed. There were no edits or corrections to be made. Chairperson Clemente made a motion to approve the minutes of the October 30, 2023 special meeting without correction, which was seconded by Member Schmidt. The motion was unanimously approved, and the minutes of the October 30, 2023 special meeting were approved.

The first item of business on the agenda was an area variance application submitted by Adam Kohler for property located on Greene Street. Joe Lynch was present on behalf of the

applicant to review the application. Chairperson Clemente stated that the application had been introduced at the Zoning Board's September 18 meeting as new business, and that a public hearing on the application scheduled for October 16 had been re-scheduled for the current meeting due to confusion over the address of the project site and the variance being sought. Chairperson Clemente stated that since the September 18 meeting, the applicant had submitted two additional documents: a corrected first page of the application, dated October 16, clarifying that the variance being requested is an area variance and that the potential lot purchaser is the applicant; and a letter from the property owner, dated October 13, consenting to the applicant representing the owner. Chairperson Clemente asked the applicant to briefly review the project. Mr. Lynch stated that he and the applicant were looking to build a house on the lot, which was located in an R-9 residential zoning district, but that the lot was too small for the zoning district and that an area variance was needed. Chairperson Clemente asked the applicant if there had been any changes made to the application since the last Zoning Board meeting. Mr. Lynch stated that there had been no changes made 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. Linda Keefe, of 47 Otsego Avenue, stated that she lived adjacent to the parcel and that in March 2023, trees had been removed from the parcel that compromised a hill behind her property and resulted in a significant drop-off immediately behind her property. Ms. Keefe asked if a permit was required to clear those trees and if so, if such a permit was obtained by the property owner. Ms. Keefe stated that she had previously spoken to the property owner and the Town about purchasing the property; that the Town told her the lot was in an R-9 residential district, meaning

the lot needed to be 9,000 square feet to build a home on it, but that the lot was well below that requirement; and that the property was a “stand alone” lot that could only have a “small home” or accessory structure on it if the lot was merged with a neighboring lot. Ms. Keefe stated that the Town should deny the application and require that a lot be at least 9,000 square feet to be consistent with the Town Zoning Code. Ms. Keefe then handed the Zoning Board members a survey/petition that she had conducted of the neighbors living on Greene Street concerning their thoughts on the application. A copy of the survey/petition was provided to the Zoning Board. Tom Dinova, of 38 Greene Street, stated that he had purchased his property in 1987 and that he had spoken to a builder about the lot and the builder had stated that it was unbuildable due to its size. Mr. Dinova stated that the lot was abandoned, overgrown, and filled with trash for many years, and that he and other neighbors maintained the property. Mr. Dinova stated that the property ultimately went up at auction, with the notice specifically stating that the lot was not buildable. Mr. Dinova stated that Rensselaer County later sold the lot, that the lot had been sold multiple times since then, before being purchased by the current property owner, Anusa Masambo. Mr. Dinova confirmed that Mr. Masambo had recently cleared the lot of trees, which had caused damage to neighboring properties, and that allowing a house to be built on the property would increase the damage to neighboring properties. Mr. Dinova stated that the Zoning Board should deny the application as the lot is too small for a house. Sabrina Saunders, of 28 Greene Street, stated that she and her husband were neighbors of the lot, that the lot is too small for a house, and that a house on the lot would greatly change the character of the neighborhood. Mrs. Saunders stated that the economic interest of the property owner is not relevant and should not be a factor for the Zoning Board to consider. Ms. Saunders reiterated what Mr. Dinova had said, that the property owner had recently had trees removed, which had damaged neighboring properties, and that the property owner should have

been required to obtain approvals from the Town to remove the trees. Ms. Saunders also stated that she had worked with Ms. Keefe in putting together the survey of the neighbors on Greene Street and their thoughts on the project. Chairperson Clemente asked if the trees cut down while clearing the property, which had been brought up multiple times, were still on the property. Ms. Saunders stated that the trees had since been cleared and were no longer on the property. Jose Santiago, also of 28 Greene Street, stated that he had contacted the previous owner of the property, who had sold the property to Mr. Masambo, in order to buy it, but the previous owner ultimately decided to sell the lot to Mr. Masambo. Mr. Santiago stated that he contacted the Town Building Department when he was trying to buy the lot and was told by the Building Department that the lot was a non-buildable lot, then asked why it was considered a buildable lot now. Mr. Santiago addressed the tree cutting on the lot, noting that the tree cutters told him that the property owner had told them that he had given permission for the trees cutters to walk and drive equipment across his property, and made it clear that not only did he not give permission to access his property, but that he was not even aware that the tree cutting was going to be done. Mr. Santiago also stated that if the Zoning Board granted the area variance, that no construction vehicles would be allowed on his property in connection with the building of the proposed house. Chad Oakland, of 31 Greene Street, stated that he had lived at his property since 2016 and that he had also contacted the previous owner about purchasing the lot before the previous owner had sold to Mr. Masambo. Mr. Oakland stated that an 1,800 square foot house was too big for a lot that small. Mr. Oakland stated that he had heard that the house being built was to be a rental home and that it would cause disruption to the community. Mr. Oakland stated that the if the area variance was granted, the house would need to be less than 1,800 square feet and that the owner would need to be invested in the community, not only for financial purposes like the current property owner. Mr. Santiago then spoke again,

asking if the current property owner was legally required to maintain the property, and noting that he has maintained the property by himself for several years. There were no further comments on the application. Chairperson Clemente asked Mr. McDonald 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 stated that a number of issues had been raised by the public concerning the current owner of the property and that all public comments must be responded to in writing. Member Mainello stated that there were multiple public comments stating that the lot had been sold multiple times, and mentioning multiple owners, so the current owner of the property should be confirmed and the current owner should be required to respond to the public comments. Member Mainello also stated that the Building Department should confirm the setbacks required for an 1,800 square foot house. Mr. Lynch then spoke, stating that he was not planning a “cash grab” and that his interest was not limited to his financial investment like previous owners. Mr. Lynch stated that he had not yet spent the money on a detailed set of plans due to the area variance not yet having been granted, and that the preliminary plans attempted to blend the proposed house into the neighborhood. Ms. Keefe then spoke again, noting that the Town adopted a new Zoning Law in 2017, and that while the old Zoning Law may have allowed an 1,800 square foot house on the property, the new Zoning Law does not. Mr. Dinova then spoke again, stating that traffic has increased recently on nearby Genessee Street, which has led to an increase in traffic on Greene Street, and that building a house would increase the traffic further. Chairperson Clemente asked Attorney Gilchrist to review the procedure for an area variance that the Zoning Board was going through for the public. Attorney Gilchrist reviewed the area variance procedure, noting that the Zoning Board did not have to make a decision at the current meeting and that the Zoning Board had up to 62 days to make a decision on the application after the public hearing is closed.

Chairperson Clemente asked the Zoning Board members if the public hearing should be kept open and they stated that it should. Member Mainello made a motion to keep the public hearing open, which was seconded by Member Schmidt. The Zoning Board voted unanimously to keep the public hearing open. Chairperson Clemente noted that additional written comments could be submitted to the Zoning Board. Chairperson Clemente also stated that written responses would be required from Anusa Masambo, the property owner. Member Mainello asked for clarification on the survey/petition, as some neighbor signatures could not be read. Ms. Saunders reviewed the document with the Zoning Board and clarified the issues. This matter is placed on the December 18, 2023 agenda for continuation of the public hearing and further deliberation.

The second item of business on the agenda was an appeal submitted by Charles Bulson for property located at 63 Indian Creek Lane. Mark Miranda, attorney 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 recused herself as well. Mr. Langlois reviewed the history of the appeal, including the public hearing held September 18, 2023, and that a written comment period had been established to run through October 2, 2023. Mr. Langlois stated that all documents had been submitted, that the record was complete, and that the Zoning Board could make a decision and may deliberate as long as it likes. Mr. Langlois stated that the Zoning Board had two options: grant the appeal and overturn the decision of the Building Department, or deny the appeal and affirm the decision of the Building Department. Mr. Langlois noted that Member Mainello was not present during the public hearing on the appeal and asked if he had reviewed the full record of the appeal. Member Mainello confirmed that he had reviewed the full record. Mr. Langlois asked Member Mainello if he had watched a recording of the public hearing. Member Mainello

confirmed that he had watched a video recording of the public hearing. Mr. Langlois asked Member Mainello if he felt that he was fully familiar with the record and could participate in the decision. Member Mainello confirmed that he was fully familiar with the record and that he would participate in the decision. Chairperson Clemente stated that she had carefully reviewed the materials and agreed with Charles Golden of the Town Building Department, noting that Section 160-29 of the Town Zoning Law clearly states the rules for an accessory structure and that it is limited to 1,500 square feet, unless it is a building for agricultural purposes. Chairperson Clemente stated that the Town Code lists the seven agricultural uses, one of which is “farm operation,” which the appellant stated was the purpose of the building. Chairperson Clemente stated that she was not persuaded that there was an ongoing farm operation on the property based on the information submitted by the appellant. Chairperson Clemente stated that she was prepared to make a motion to deny the appeal. Member Schmidt agreed with Chairperson Clemente, stating that there was no evidence of an ongoing farm operation on the property. Member Mainello also agreed that there was not a farm operation on the property. Chairperson Clemente made a motion to deny the appeal, which was seconded by Member Mainello. The Zoning Board voted unanimously to deny the appeal. Mr. Langlois stated that he would draft a written decision of the Zoning Board for the record. Mr. Langlois stated that he would prefer that the written decision be reviewed and approved by the Zoning Board within the 62-day period following the closing of the written comment period, which expires on December 3. Mr. Langlois noted that December 3 is a Sunday, so 62-day period legally ends on Monday December 4, and proposed a special meeting of the Zoning Board for that date for the purpose of reviewing and adopting the written decision. Chairperson Clemente made a motion to schedule a special meeting of the Zoning Board for December 4, 2023 at 6:00pm, which was seconded by Member Schmidt. The Zoning Board voted unanimously to schedule a

special meeting of the Zoning Board for December 4, 2023 at 6:00pm. The complete audio recording of the Zoning Board deliberation on the appeal of Charles Bulson is on file at the Town of Brunswick.

There was no new business to discuss.

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

1. Kohler – area variance (December 18, 2023).
2. Bulson – appeal (December 4, 2023).

The proposed agenda for the December 4, 2023 special meeting is as follows:

1. Bulson – appeal.

The proposed agenda for the December 18, 2023 regular meeting is as follows:

1. Kohler – area variance.