

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 JANUARY 22, 2024

PRESENT were ANN CLEMENTE, CHAIRPERSON, PATRICIA CURRAN, E. JOHN SCHMIDT, 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 November 20, 2023 regular meeting were reviewed. Chairperson Clemente noted two corrections: on page 7, line 11, “Clemente” was misspelled, and on page 5, line 18, “Genesee” was misspelled. Chairperson Clemente made a motion to approve the minutes of the November 20, 2023 regular meeting subject to the noted corrections, which was seconded by Member Mainello. The motion was unanimously approved, and the minutes of the November 20, 2023 regular meeting were approved subject to the noted corrections.

The draft minutes of the December 4, 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 December 4, 2023 special meeting without correction, which was seconded by Member Schmidt. The motion was unanimously approved, with Member Curran abstaining, and the minutes of the December 4, 2023 special meeting were approved.

There were no items of business on the agenda.

The Zoning Board discussed two items of new business.

The first item of new business was an area variance application submitted by Anusa Masambo for property located on Greene Street. Anusa Masambo was present to review the application. Mr. Masambo stated that he was proposing to build a 790 square foot single-family house on the property, that the lot is approximately 6,000 square feet, and that the Town Zoning Law requires a single-family home to be 9,000 square feet in this zoning district. Mr. Masambo stated that the proposed structure would meet all required setbacks, that the area variance was only for the size of the lot, that the use would be residential only, and that the small residential structure would fit on the lot while meeting all required setbacks. Chairperson Clemente stated that the application should be clarified to note that the property is in an R-9 residential zoning district. Chairperson Clemente noted two documents included with the application: the first was a copy of a page from the Brunswick Zoning Law listing the required setbacks for a nonconforming lot, and the second was a sketch that showed the structure meeting all required setbacks. Member Curran asked if 790 square feet met the minimum size requirement for a single-family house in an R-9 zoning district. Mr. Golden stated that the minimum square footage for a single-family home was 720 square feet. Member Curran asked if the lot being a substandard lot affected the requirements, such as requiring a smaller structure. Mr. Golden stated that the substandard lot size would not affect the size requirements, and that an R-9 zone was the smallest zoning district in the Town Zoning Law. Member Curran asked if there were any other size requirements for substandard lots under prior Town Zoning Ordinances. Mr. Golden stated that he was not aware of any other size requirements under prior Town Zoning Ordinances. Member Curran asked if the Zoning Board needed to consider only the current requirements for a structure in an R-9 zoning district. Mr. Golden confirmed that the Zoning Board only needed to consider the requirements listed in the

current Town Zoning Law. Mr. Golden stated that the percentage of lot occupancy was based on the requirements for an R-9 zoning district, but asked if the lot size and area/bulk requirements would need to be reduced due to the lot only being approximately 6,000 square feet. Attorney Gilchrist stated that the current Town Zoning Law requirements needed to be applied by the Zoning Board, and that the area variance would address the request to place a 790 square foot structure on an approximately 6,000 square foot lot, while applying the necessary area variance factors. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for February 26, 2024 at 6:00pm.

The second item of new business was a use variance application submitted by Daniel Hagberg for property located at 4021 NYS Route 2. Kevin Wickham, of Bolt Storage, was present to review the application. Mr. Wickham stated that the applicant acquired the site in 2021, that the previous owner of the property had received Planning Board approval for two self-storage structures in 2008, and that the previous owner had begun a second phase of expansion for self-storage units on the site in 2009 without receiving Planning Board approval. Mr. Wickham stated that while self-storage was an allowable use for the property in 2008, the current Town Zoning Law passed in 2017 placed this property in a hamlet district, which does not allow self-storage units, meaning that the self-storage structures installed on the site without prior Town approval are not in compliance with the Town Zoning Law. Mr. Wickham stated that the applicant is only looking to have the current structures on the site come into compliance. Member Curran asked if self-storage was actually allowed on the site under the prior zoning ordinance. Attorney Gilchrist stated that the record shows that the Planning Board approved a site plan application for two self-storage structures on the property in 2008, that the applicant had later filed an application to modify that approved site plan application for more self-storage buildings, but that the second application

had not been completed. Mr. Golden asked if the use variance was granted, would the setbacks for a hamlet district apply. Attorney Gilchrist confirmed that the setbacks required under the current Town Zoning Law would apply. Attorney Gilchrist asked to confirm that the use variance being sought was only for the self-storage structures currently on the site, not any additional structures. Mr. Wickham confirmed that the use variance was only for the structures currently on the site, and the intent was to bring those structures into compliance with the Town Zoning Law. Chairperson Clemente noted that use variance applications were less frequent than area variance applications brought before the Zoning Board, that there were different legal standards for a use variance, and asked Attorney Gilchrist to review the process for reviewing a use variance application. Attorney Gilchrist stated that area variances are for allowable uses that have area and bulk compliance issues, while use variances are requests for non-allowable uses. Attorney Gilchrist then reviewed the legal standards for review of use variance applications. Mr. Wickham noted that most of the non-permitted structures had been placed on the site before the new Town Zoning Law was adopted in 2017. Attorney Gilchrist stated that other than the first two structures shown on the site plan as approved in 2008, the subsequent structures were placed on the site without the proper permitting and would be held to the standards of the 2017 Zoning Law, even if most had been placed on the site prior to 2017. Chairperson Clemente stated that in the past, the Zoning Board had required applicants seeking a use variance to list out all allowable uses on the site and explain why a reasonable economic return could not be achieved by any of those uses, and asked the other Zoning Board members if that should be required of this applicant. The Zoning Board agreed that the applicant should submit a list of all allowable uses on the site and reasons why a reasonable economic return could not be achieved by any of those uses. Attorney Gilchrist stated that the two structures permitted in 2008 were still allowed, that the current use variance is for the other

structures on the site, and that those other structures would need to be taken down if the use variance was not granted. Chairperson Clemente noted that the cost of demolition of the buildings if the use variance were to not be granted should be included in the analysis. Member Mainello asked what type of units had been placed on the site without approval. Mr. Wickham stated that modular units had been placed on the site. Member Mainello asked if non-approved units had been placed on concrete pads. Mr. Wickham stated that the structures had been placed directly on the ground. Mr. Golden asked if there was a septic system on the site. Mr. Wickham stated that there was not. Mr. Golden stated that many allowable uses on the site require a septic system, and that the cost of installing a septic system should be included in the applicant's economic analysis. Attorney Gilchrist added that the high water table and location near a flood plain should be considered for the economic analysis as well. Member Schmidt asked if the Zoning Board members had permission to visit the site. Mr. Wickham 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 February 26, 2024 at 6:15pm. Chairperson Clemente asked that the applicant submit the economic analysis no later than February 16 so it could be distributed to the Zoning Board members.

The index for the January 22, 2024 regular meeting is as follows:

1. Masambo – area variance (February 26, 2024).
2. Hagberg – use variance (February 26, 2024).

The proposed agenda for the February 26, 2024 regular meeting is as follows:

1. Masambo – area variance (public hearing to commence at 6:00pm).
2. Hagberg – use variance (public hearing to commence at 6:15pm).