

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 26, 2024

PRESENT were ANN CLEMENTE, CHAIRPERSON, PATRICIA CURRAN, E. JOHN SCHMIDT, JOHN MAINELLO III and 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. It was noted that the public hearing scheduled for 6:00pm had been cancelled, but that the public hearing scheduled for 6:15pm would be held as noticed.

The draft minutes of the January 22, 2024 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 22, 2024 regular meeting without correction, which was seconded by Member Curran. The motion was unanimously approved, and the minutes of the January 22, 2024 regular meeting were approved.

Due to the cancellation of the public hearing that had been noticed for 6:00pm, the Zoning Board agreed to hear new business until the 6:15pm public hearing commenced.

The first item of new business was an area variance application submitted by Robert Patton for property located at 24 Oxford Circle. Robert Patton was present to review the application. Mr. Patton stated that he was looking to replace a 6-foot by 8-foot shed with a 12-foot by 24-foot shed. Mr. Patton stated that the new shed would be placed next to the location of the current shed, which is 3 feet from the fence along the back property line, and that he is requesting a rear yard setback

variance. Mr. Patton also stated that there is no other location on his property for a shed that size, partially due to a raised septic system installed on his property 2 years ago. Chairperson Clemente noted that 20 feet of setback from the rear property line was required and that the applicant was requesting 3 feet of setback. The Zoning Board discussed the map submitted with the application, identifying the area of the raised septic system, and agreed that the septic system limited the area for the proposed shed. Chairperson Clemente asked if the applicant would be able to mow the grass and otherwise maintain the 3 feet of space between the end of the proposed shed and the fence along the property line. Mr. Patton stated that he planned to use a weed whacker on the area, and that not much grew there anyway due to shade from nearby trees. Member Curran asked what type of fence was along the property line. Mr. Patton stated that it was a chain link fence. Chairperson Clemente asked if the six-foot slab beneath the proposed shed would be a new or existing slab. Mr. Patton stated that it would be a new slab. Chairperson Clemente asked if the Zoning Board members had permission to visit the property. Mr. Patton stated that the Zoning Board members had permission to access his property. 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 18, 2024 at 6:00pm.

The Planning Board then began its scheduled agenda.

The first item of business on the agenda was a use variance application submitted by Daniel Hagberg concerning the current self-storage use at the property located at 4021 NYS Route 2. Kevin Wickham, of Bolt Storage, was present to review 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 asked Mr. Wickham if there had been any changes made to the application since the last Zoning Board meeting. Mr. Wickham stated that there had been no changes made to the application. Chairperson Clemente asked Mr. Wickham to briefly review the project. Mr. Wickham stated that the applicant acquired the property in 2021; that it was discovered after acquiring the property that the storage units on the site were not in compliance with the Brunswick Zoning Law and that the property had been placed in the Hamlet District, where self-storage units are not allowed, when the current Zoning Law was passed in 2017; that many of the self-storage units had been properly permitted through site plan review at the Brunswick Planning Board prior to 2017, but a certain number of units had been placed on the site without Town approval prior to the time that the applicant acquired title in 2021; and that the applicant is seeking the use variance to bring these self-storage units currently on the site into compliance. Chairperson Clemente opened the public hearing on the application. There were no public 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 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. Member Curran asked if the self-storage units along the back of the parcel met the required rear setback. Mr. Wickham and the Zoning Board reviewed the site map and determined that 30 feet of setback would not be met by the self-storage units at the back of the parcel, as 30 feet from the property line was in the middle of the current location of those units. Member Curran asked if the units at the back of the parcel could be relocated to meet the rear setback requirement. Mr. Wickham stated that all the units in question are currently filled, but that those units could be moved if necessary. Chairperson Clemente asked

if moving the units at the back of the parcel would affect access to other units on the site. Mr. Wickham confirmed that moving the units at the back of the parcel could affect the ability to access other units on the parcel and that other units may need to be moved as well. Member Mainello asked if all the units on the site were occupied. Mr. Wickham stated that he was not sure if all units were occupied, but at least most of them were. Chairperson Clemente asked if an addendum could be added to the application to address the rear setback issue. Attorney Gilchrist stated that only the use variance application was currently before the Zoning Board and that the applicant had three options: pursue the use variance now and later reconfigure the site to come into compliance for rear setback requirements; amend the current application to add a request for an area variance, which would require a further public hearing; or pursue the use variance now, and apply for an area variance at a later date. Mr. Wickham stated that he would pursue the use variance now, as there would be no point in pursuing an area variance now if the use variance was denied. The Planning Board discussed the setback issue and agreed to review the use variance now, even with the potential setback issue, as the applicant indicated that he could relocate units if necessary. Chairperson Clemente made a second call for public comment, and there were none. 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. The Zoning Board then reviewed the four standards of unnecessary hardship necessary to grant a use variance. The first standard is that the applicant cannot realize a reasonable economic return, provided that lack of return is substantial as demonstrated by competent financial evidence. Chairperson Clemente stated that there had been a longstanding use of self-storage on the site since October 2008, that the Zoning Board had requested that the applicant submit economic proof that the applicant would not be able to achieve a reasonable economic return on the site with any other permitted use, and

that the applicant had done so. Chairperson Clemente noted that the economic proof submitted was very different from the type of economic proof usually submitted by an applicant seeking a use variance, as the applicant had calculated the cost to demolish all self-storage units on the site, as well as site grading costs, both of which would be required to pursue any permitted use on the site, and concluded that it was not economically viable to pursue any permitted uses for the site. The other Zoning Board members agreed that the economic proof was unusual, but acceptable and conclusive. The second standard is that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the land use area or neighborhood. Chairperson Clemente noted that the prior Brunswick Zoning Ordinance had permitted self-storage units at this location; that a site plan had been reviewed and approved by the Planning Board for many of the existing self-storage units on the site; that the current owner has stated that he was unaware of the compliance issue when he acquired the property in 2021; and that the hardship was unique and was primarily due to the 2017 Zoning Law prohibiting self-storage on the parcel, and that the hardship was limited to this parcel in this district with its unique history. The third standard is that the requested variance, if granted, will not alter the essential character of the neighborhood. Member Mainello stated that the use would not alter the character of the neighborhood as the self-storage units had been on the property since 2008. The fourth standard is whether the alleged hardship has been self-created. Member Lockrow stated that it was not self-created due to the Zoning Law changing in 2017, and it was the previous owner, not the current owner, that failed to properly permit the storage units on the site before 2017. Chairperson Clemente noted that the action was in a nonresidential area and that a short Environmental Assessment Form (EAF) had been submitted, and that there would be no adverse environmental impact as a result of the use. Chairperson Clemente made a motion to adopt a negative declaration under SEQRA, which motion

was seconded by Member Lockrow. The motion was unanimously approved, and a SEQRA negative declaration adopted. Chairperson Clemente stated that the Zoning Board must consider the four standards for granting the use variance. Attorney Gilchrist stated that the Zoning Board could act on the use variance application as it was properly before the Zoning Board and, if granted, it would be up to the applicant on how to proceed with the identified rear setback issue. Member Curran made a motion to grant the requested use variance, which was seconded by Member Lockrow. The motion was unanimously approved and the use variance was granted. The Zoning Board directed Attorney Gilchrist to prepare a written decision in this matter consistent with the Zoning Board's deliberation and determination.

The Zoning Board then returned to new business.

The second 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 seeking to construct a single-family home on the property, which was a nonconforming lot, as the lot was 6,000 square feet and the Town Zoning Law requires single-family lots to be 9,000 square feet in this zoning district. Mr. Masambo stated that he had submitted a revised application due to an error on the dimensions of the first floor of the proposed house. Mr. Masambo stated that the house was proposed to be approximately 1,700 square feet, with an 865 square foot first floor and a 911 square foot second floor, a maximum height of 27 feet for the structure, all of which were compliant with the Town Zoning Law, and that the house would meet all required setbacks. Mr. Masambo stated that the lot has been vacant for several years, that he purchased the lot approximately one year ago with the intention of the developing it, and that the house will conform to the residential standards of the surrounding neighborhood. Chairperson Clemente noted that the parcel was in a R-9 residential zoning district.

Member Curran asked what percentage of the lot would be covered by the house. Mr. Masambo stated that the house would cover 20% of the lot. Member Curran asked about the site layout, noting that Section 160-25(D) of the Town Zoning Law states that a terrace must be at least 10 feet from a side or rear lot line, and asked if the terrace shown on the site plan layout included with the application would meet the required rear setback. Mr. Masambo stated that the terrace would not be included. Attorney Gilchrist stated that whether the terrace was included in calculating the setback was within the jurisdiction of the Town Building Department and that the Building Department would supply that information to the Zoning Board. Member Curran asked if there were any issues with the square footage of the structure and/or lot coverage. Attorney Gilchrist stated that these issues were also within the jurisdiction of the Building Department, and that such information would also need to be provided by the Building Department. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. Chairperson Clemente asked if the Zoning Board members had permission to visit the site. Mr. Masambo confirmed that the Zoning Board members had permission to access the site. A public hearing on this application is scheduled for March 18, 2024 at 6:15pm.

The third item of new business was an area variance application submitted by Michael Covey for property located at 25 Old State Route 142. Michael Covey was present to review the application. Mr. Covey stated that he was looking to build a greenhouse on the property; that he had recently purchased the parcel; that due to the parcel's island-like shape and proximity to two public roads, the parcel has two front property lines; and that he was seeking a setback variance for one of the front property lines. Mr. Covey stated that the proposed greenhouse would be 16 feet by 84 feet. Chairperson Clemente stated that the specific setback the variance was being sought for was the property line off Old State Route 142, that 70 feet of setback is required, and that the

applicant was requesting 24 feet of setback. Chairperson Clemente noted that the property was in an R-25 residential zoning district. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. Chairperson Clemente asked if the Zoning Board members had permission to visit the site. Mr. Covey confirmed that the Zoning Board members had permission, but requested that the Zoning Board members contact him first, and that his contact information could be found on the application. A public hearing on this application is scheduled for March 18, 2024 at 6:30pm.

The fourth item of business was an area variance application submitted by Justin Haas for property located at the corner of NYS Route 7 and Carroll's Grove Road. Justin Haas was present to review the application. Mr. Haas stated that he was seeking to build self-storage units on the property and was requesting two area variances for setback. Mr. Haas also stated that Charles Farrell, the property owner, had consented to the application in writing, which had been included with the application documents. Chairperson Clemente stated that the property was in a Business Light Overlay zoning district. The Zoning Board reviewed the site map, specifically the side setbacks. Mr. McDonald stated that 25 feet of setback was required for side setbacks, which the proposed self-storage units would meet. Chairperson Clemente asked how the size of the retention pond on the site was determined. Mr. Haas stated that the size of the retention pond was determined by expected rooftop runoff and blacktop runoff, as well as NYS Department of Transportation (DOT) requirements. Chairperson Clemente asked what would be between the retention pond and NYS Route 7. Mr. Haas stated that grass would be between Route 7 and the retention pond. Chairperson Clemente asked if there would be a berm between the retention pond and Route 7, and Mr. Haas confirmed there would be. Chairperson Clemente asked if there would a fence around the retention pond, and Mr. Haas confirmed there would be. Chairperson Clemente reviewed the

site map and asked if there was an upward slope from Route 7 to the project site, and Mr. Haas confirmed that there was. Chairperson Clemente asked if there would excavation required for the retention pond, and Mr. Haas confirmed that there would be. Chairperson Clemente stated that the project's detriment to the surrounding neighborhood was an element that the Zoning Board must consider, that the size and character of the project was listed in the application, but that information on signage, lighting, and landscaping was not. Mr. Haas stated that that information had not been included as he had not wanted to spend too much money yet if the project had no chance of moving forward, but that additional information could be provided. Mr. Haas also stated that that the site would have solar lighting, which would be lit all night long. Chairperson Clemente asked what the hours of customer access would be. Mr. Haas stated that the hours would 8:00 AM to 8:00 PM seven days a week. Chairperson Clemente stated that the Zoning Board usually requires a business to have lights on during the hours of operation only and to turn off the lights when the business is closed, allowing only security lighting. Chairperson Clemente asked if the applicant had any landscaping plans, specifically between the highway and retention pond. Mr. Haas stated that he planned to plant some trees in that area. Mr. Haas also stated that the project site would be gated, with access only available from Carroll's Grove Road, not Route 7. Member Mainello asked if the applicant operated another location like this one, and Mr. Haas confirmed that he did, in Lansingburgh. Member Mainello asked if the Zoning Board members had permission to visit that other site. Mr. Haas confirmed that the Zoning Board members had permission to access his other location in Lansingburgh. A public hearing on this application is scheduled for March 18, 2024 at 6:45pm.

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

1. Patton – area variance (March 18, 2024).
2. Hagberg – use variance (approved).
3. Masambo – area variance (March 18, 2024).
4. Covey – area variance (March 18, 2024).
5. Haas – area variance (March 18, 2024).

The proposed agenda for the March 18, 2024 regular meeting is as follows:

1. Patton – area variance (public hearing to commence at 6:00pm).
2. Masambo – area variance (public hearing to commence at 6:15pm).
3. Covey – area variance (public hearing to commence at 6:30pm).
4. Haas – area variance (public hearing to commence at 6:45pm).