

## **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 MAY 20, 2024**

PRESENT were ANN CLEMENTE, CHAIRPERSON, PATRICIA CURRAN, E. JOHN SCHMIDT, 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 April 15, 2024 regular meeting were reviewed. Chairperson Clemente noted one correction: on page 6, line 4, “improved” should be changed to “approved.” Chairperson Clemente made a motion to approve the minutes of the April 15, 2024 regular meeting subject to the noted correction, which was seconded by Member Mainello. The motion was unanimously approved, and the minutes of the April 15, 2024 regular meeting were approved subject to the noted correction.

The first item of business on the agenda was an area variance application submitted by Travis Bradley for property located at 3 Watson Avenue. Travis Bradley 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. Bradley to briefly review the application, and if there had been any changes made to the application since the last Zoning Board meeting.

Mr. Bradley stated that there had been no changes made to the application, and stated that he was seeking a front yard setback variance for an above-ground pool. Chairperson Clemente stated that the applicant was seeking one front yard setback variance due to having two front setbacks on his property due to being a corner lot, but that one of the streets was a paper street that had never been constructed, and that the project site looked like a side yard in the field. 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 or comments from the Zoning Board members. 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 project was a Type II action under SEQRA, which does not require any further SEQRA review. 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. The Zoning Board then reviewed the elements for consideration on the area variance requested in the 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 no undesirable changes had been identified and that there were pools at other properties in the neighborhood. As to whether a feasible alternative was available, Chairperson Clemente stated that the proposed location for the pool was on level ground and had adequate privacy, and that there was no alternative due to a septic system and leachfield on the property. As to whether the requested variance was substantial, Chairperson Clemente stated that 60 feet of front setback was required, and that the applicant was

proposing 29 feet of setback. Chairperson Clemente stated that the area of the requested setback variance looks like a side yard in a field due to the paper street never having been built, and that a side setback in an R-9 residential zoning district is only 10 feet, so a variance would not be required if not for the paper street. Chairperson Clemente also stated that a variance of 31 feet may seem significant, but that it was not substantial due to the conditions of the site. As to whether the variance would create an adverse environmental impact, Member Curran stated that the applicant would not be taking down any trees and that there would be barely any grading on the site, resulting in no environmental impact at all. As to whether the difficulty giving rise to the need for the variance was self-created, Chairperson Clemente stated that it was, but that the applicant had tried to previously mitigate the issue by merging two adjoining lots, and that this factor was not determinative in this case. Chairperson Clemente stated that the Zoning Board needed to balance the benefit to the applicants with any potential detriments to the surrounding neighborhood. Member Curran made a motion to grant the area variance, which was seconded by Member Lockrow. 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 second item of business on the agenda was an application for two area variances submitted by Alexander Hyra for property located at 302 Carrolls Grove Road. Alexander Hyra was present to review the application. Chairperson Clemente asked Mr. Hyra to briefly review the application, and if there had been any changes made to the application since the last Zoning Board meeting. Mr. Hyra stated that he was looking to build a 30-foot by 50-foot steel garage in front of his house, that his backyard was not a possible location for the garage due to a leachfield, that the garage is proposed for a location far back enough that it could not be seen from Carrolls Grove

Road except during the winter during leaf-off conditions, and that he would not be cutting any trees at the proposed location of the garage. 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 one written letter had been received, dated May 14, from Christian Dehnert, of 315 Carrolls Grove Road, stating that he had no opposition to the project, and Mr. Golden read that letter into the record. Chairperson Clemente asked to clarify that Mr. Hyra's property was 2.33 acres, which Mr. Hyra confirmed was correct. 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 project was a Type II action under SEQRA, which does not require any further SEQRA review. 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. The Zoning Board then reviewed the elements for consideration on the area variances requested in the application. As to whether the requested variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairperson Clemente stated that there would be no undesirable changes or detriments, and that accessory structures of that size were common in A-40 zoning districts. As to whether a feasible alternative was available, Member Curran stated that there was not due to the leachfield in the backyard. As to whether the requested variances were substantial,

Chairperson Clemente stated that 75 feet of front setback was required, and that the applicant was proposing 40 feet of setback, and that the applicant was seeking a second variance for having an accessory structure in front of a primary structure. Chairperson Clemente stated that the garage would not be visible during leaf-on conditions, which is the majority of year, that vehicles would have direct access to the garage via the existing driveway on the property, that the garage was designed to look consistent with the existing house on the property, and that the variance should therefore not be considered substantial in this case. As to whether the variances would create an adverse environmental impact, Member Mainello stated that there would be no environmental impacts due to the construction and location of the garage. As to whether the difficulty giving rise to the need for the variances was self-created, Member Lockrow stated that it was, but that the applicant was limited in where he could build the garage due to constraints on the property, and that this factor was not determinative in this case. Chairperson Clemente stated that the Zoning Board needed to balance the benefit to the applicant with any potential detriments to the surrounding neighborhood. Member Curran made a motion to grant the area variances, which was seconded by Member Mainello. The motion was unanimously approved and the area variances were 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 area variances submitted by Justin Haas for property located at the corner of NYS Route 7 and Carrolls Grove Road. Justin Haas was present to review the application. Chairperson Clemente stated that the applicant had submitted photos of the project site since the last Zoning Board meeting. Chairperson Clemente stated that the Zoning Board had requested five pieces of information at the last meeting: information on fencing at the site, a lighting plan, a vegetation plan, information on the design and

color of the storage buildings, and a letter from Wayne Bonesteel, review engineer for the Planning Board, reviewing the project's stormwater plan. Chairperson Clemente stated that the Zoning Board would review the photos submitted by Mr. Haas and determine if the requested information had been addressed. The Zoning Board discussed the design and color of the metal buildings, noting that the photos showed that the buildings would be bronze or off-black with red doors. Mr. Haas stated that the photos were of buildings from a previous site he had owned. Chairperson Clemente asked if crusher run was shown in front of the building on the site in the photos. Mr. Haas stated that it was pavement, and that this proposed site would be paved as well. Mr. Haas also stated that his new engineer had told him that if he used crusher run on the site, he could reduce the size of the proposed stormwater pond, but that he preferred blacktop as it looked better and was easier to maintain. The Zoning Board then discussed lighting on the site. Mr. Haas stated that the site would have solar-powered wall packs that feature downlighting. Member Curran asked if the lighting would be motion-activated. Mr. Haas confirmed that it would be. The Zoning Board then discussed the proposed vegetation on the site. Member Mainello asked if there would be trees within the fence line on the property. Mr. Haas confirmed that there would be. Member Curran asked if the trees would be planted 4-6 feet apart in a line. Mr. Haas confirmed that they would be, and that the tree line would be located between the front property line and the lot line containing the entrance driveway. The Zoning Board then discussed fencing on the site. Member Curran asked if the adjacent neighbor to the west of the site had acquired a buffer area marked on the site map. Mr. Haas confirmed that a marked area on the site map had been previously acquired by the adjacent neighbor as a buffer, and also had the setback between the property line and their house as a buffer. Mr. Haas stated that he was not proposing additional trees on the western property line between the project site and the adjacent parcel, only chain link fencing. Mr. Haas also stated that

he was proposing chain link fencing due to maintenance issues. The Zoning Board then discussed the stormwater plan for the project. Chairperson Clemente stated that the Zoning Board had received the requested letter from Mr. Bonesteel, which was dated May 17. A copy of the letter was provided to Mr. Haas. Chairperson Clemente reviewed the letter, stating that Mr. Bonesteel wrote that he did not have adequate stormwater information to undertake a complete review of the project. Chairperson Clemente stated that given the proposed grading of the site, and the impact of runoff from the building and the roadway surface, the Zoning Board had requested the stormwater information for its environmental review and consideration of the factors in determining whether to grant or deny the requested variances. Mr. Haas stated that his new engineer told him that stormwater was a Planning Board issue and asked why the Zoning Board required it to make a determination. Chairperson Clemente stated that stormwater was an environmental issue, which was a SEQRA issue and one of the elements the Zoning Board needed to review to make a determination on the variance request. Mr. Haas stated that he was not willing to put any more money into the project before knowing if the variances requested from the Zoning Board would be granted. The Zoning Board then discussed stormwater issues with the site. Attorney Gilchrist stated that the Zoning Board reviews five elements when determining if an area variance is to be granted, that potential adverse environmental impacts are one of those elements, that stormwater issues were environmental issues under SEQRA, and therefore stormwater impacts must be considered by the Zoning Board. Chairperson Clemente stated that the Zoning Board does not have all the requested information and asked if the applicant was asking the Zoning Board to make a determination with what the Board had determined to be incomplete information. Mr. Haas reiterated that he was not willing to spend more money on the project at this point. Chairperson Clemente stated that the Zoning Board was again requesting stormwater information

on the project, and that the applicant was declining to provide that information, resulting in the Zoning Board potentially making a determination with incomplete information. Member Schmidt noted that the applicant would spend the money on the same stormwater plans during his project review at the Planning Board, and that he would just be spending that money sooner than expected. Mr. Haas reiterated that he was not willing to spend more money on the project until he knew the variances were approved. Chairperson Clemente reiterated that the Zoning Board could act on the area variance applications with the information presented. Member Curran stated that the Zoning Board should act now as the applicant stated that further information would not be presented and the Board may as well as act and not delay until next meeting. Member Schmidt agreed, stating that the applicant had put the Zoning Board in the position of having to act without all requested information. Member Mainello also agreed, stating that the stormwater information could potentially change the entire project layout. Attorney Gilchrist stated that it was within the discretion of the Zoning Board on when to act on the application, that the Zoning Board had 62 days after the close of the public hearing to act, that the public hearing had been closed at the Zoning Board's April 15 meeting, that 62 days after April 15 was June 16, that the next regular meeting of the Zoning Board would be June 17, and that if the Zoning Board members were not ready to make a determination at the present meeting, it could schedule a special meeting to be held before the next regular meeting. Chairperson Clemente asked Mr. Haas if he consented to a one-day extension of the 62-day period to act on the application. Mr. Haas declined to extend the 62-day period, asking the Zoning Board to make a determination based on the information submitted. Attorney Gilchrist reiterated that the Zoning Board could consider a special meeting to review the record and make a determination. Member Mainello asked if the Zoning Board could make a determination at the current meeting as the applicant stated that he would not be submitting



any additional information. Attorney Gilchrist stated that the Zoning Board could act at the present meeting, but that he would like to review the entire record on the application before a determination was made. Mr. Haas asked if the previous engineering plan he had submitted would suffice. Member Mainello stated that the letter submitted by Mr. Bonesteel overrode any previous engineering information and that the letter stated that there was not enough information concerning stormwater. The Zoning Board agreed to hold a special meeting, which would only have this application on the agenda, on June 3. This matter is placed on the June 3, 2024 special meeting agenda for further deliberation.

The fourth item of business on the agenda was an area variance application submitted by Anusa Masambo for property located on Greene Street. Anusa Masambo was present to review the application. Chairperson Clemente stated that she wanted to review the “key measures” listed by the applicant in the responses to public comments submitted to the Zoning Board in order to determine enforceable land use conditions and possible conditions to Zoning Board action on the variance. Attorney Gilchrist stated that he had reviewed the “key measures” listed by the applicant in the responses to public comments, that some issues raised are properly considered private issues between the property owner and the contractor and were therefore not Zoning Board issues, and that he had noted three “key measures” as potential conditions for the Zoning Board to consider: marking boundaries and setbacks during construction; no storage of materials or equipment on a public road or any off-site lot, and all materials and equipment must be stored on the parcel Tax Map No. 90.20-8-15; and coordinate with the Town of Brunswick Highway Department on truck parking and site entrance during construction. Chairperson Clemente stated that the public hearing on the application had been closed, that responses had been submitted by the applicant, and that no further information was needed. The Zoning Board members stated that they were prepared to

act on the application. Chairperson Clemente stated that the project was 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 requested in the 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 asked if the proposed structure would look out of place in the neighborhood. Member Curran stated that based on the report/chart made by the Building Department, the proposed house would be similar in lot size and lot coverage to other houses in the neighborhood and would not be out of character. Chairperson Clemente stated that the property is located in an R-9 residential zoning district and that all setbacks would be met and be in compliance with the Town Zoning Law, and that the variance sought approval to construct a residential structure on an existing nonconforming lot. As to whether a feasible alternative was available, Member Curran stated that the Zoning Law was changed in 2017, which changed zoning requirements and made the lot a nonconforming lot, meaning that there was no option available to build on the lot without a variance. As to whether the requested variance was substantial, Chairperson Clemente stated that the applicant was proposing to construct a house on a 6,000 square foot lot where 9,000 square foot lots are required. Member Schmidt stated that if the house is built, people could drive by the house in a few years and not even know that it is a substandard lot and it would blend in with the other houses on Greene Street. As to whether the variance would create an adverse environmental impact, Member Mainello stated that another house on the street instead of a vacant lot would increase property values and not cause any environmental impacts. Chairperson Clemente stated that all concerns expressed by the neighbors at the public hearing had been adequately addressed in the applicant's responses to public comments, including environmental concerns. As to whether the difficulty giving rise to the need

for the variance was self-created, Member Mainello stated that it was due to the applicant wanting to build the house, but that it was an existing nonconforming lot, and that this factor was not determinative in this case. Chairperson Clemente reviewed the three key measures listed by Attorney Gilchrist and agreed that all three should be conditions to any action by the Zoning Board. Chairperson Clemente stated that the applicant had discussed installing silt fencing to mark the lot line boundary and setback markers during construction at previous meetings and that it should also be a condition. Member Curran asked if some silt fencing was currently installed at the site, and Mr. Masambo confirmed that there was. The Zoning Board discussed the issue and agreed that marking the lot line boundary with silt fencing, as well as the foundation location when footings are being poured, should also be a condition. Chairperson Clemente stated that the Zoning Board needed to balance the benefit to the applicant with any potential detriments to the surrounding neighborhood. Member Lockrow made a motion to grant the area variance subject to the following conditions:

- (1) Marking boundaries and setbacks with silt fencing during construction;
- (2) Coordinate with the Building Department on the foundation location when footings are being poured;
- (3) No storage of materials or equipment on a public road or any off-site lot, and all materials and equipment must be stored on Tax Map No. 90.20-8-15;
- (4) Coordinate with the Highway Department on truck parking and site entrance during construction.

The motion was seconded by Member Mainello. The motion was unanimously approved and the area variance was granted subject to the four stated conditions. Chairperson Clemente directed the applicant to continue working with the Town Building Department on this matter.

There was no new business to discuss.

The index for the May 20, 2024 regular meeting is as follows:

1. Bradley – area variance (approved).
2. Hyra – area variances (approved).
3. Haas – area variances (June 3, 2024).
4. Masambo – area variance (approved with conditions).

The index for the June 3, 2024 special meeting is as follows:

1. Haas – area variances.

There are currently no agenda items for the June 17, 2024 regular meeting.