

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 16, 2020**

PRESENT were E. JOHN SCHMIDT, JOHN MAINELLO III, PATRICIA CURRAN, and ANDY MORIN.

ABSENT was ANN CLEMENTE, CHAIRPERSON

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Member Curran acted as Chair for this meeting.

The transcripts of the August 17, 2020 and September 21, 2020 were reviewed, together with the minutes of the joint public hearings held with the Brunswick Planning Board dated October 15, 2020 and the meeting minutes of October 19, 2020. Regarding the August 17, 2020 transcript, one correction was noted at page 33, first “chair” entry, last sentence, amended it to read “do their homeschooling”. Member Curran made a motion to approve the transcript of the August 17 meeting subject to the noted correction, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the transcript of the August 17, 2020 meeting was approved subject to the stated correction (Member Morin abstaining).

Regarding the September 21, 2020 meeting transcript, two corrections were noted, starting at page 33, second “chair” entry, second line, the term “fiscal” is amended to “physical”; page 44, fourth “chair” entry, last line, the word “to” is amended to “two”. Member Curran made a motion to approve the transcript of the September 21 meeting subject to the noted corrections, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the

transcript of the September 21, 2020 meeting was approved subject to the noted corrections (Member Morin abstaining).

Regarding the minutes of the joint public hearings with the Brunswick Planning Board held October 15, 2020, member Curran made a motion to approve the minutes as drafted, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the minutes of the joint public hearings held October 15, 2020 were approved (Member Morin abstaining).

Regarding the minutes of the October 19, 2020 meeting, one correction was noted at page 13, the name “Darren Palmetto” was corrected to “Darin Palmetto”. Member Curran made a motion to approve the minutes of the October 19, 2020 meeting subject to the noted correction, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the minutes of the October 19, 2020 meeting were approved subject to the noted correction (Member Morin abstaining).

The first item of business on the agenda was the area variance application submitted by Gina DeBonis for property located at 112 Seneca Street. The applicant seeks approval to install an in-ground pool at this location, requiring a front yard setback variance. The Zoning Board opened the public hearing on the application. The Notice of Public Hearing was read into the record, noting that the Public Hearing Notice was published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Ed Inglis was present on behalf of the applicant. Member Curran inquired whether there were any changes to the application since the last meeting. Mr. Inglis stated that there were no changes to the application. Member Curran then wanted to confirm the correct map for this application, since there was one map bearing date October 15, 2020 noting a 20-foot setback from Norfolk Street, and a map dated October 16, 2020 noting a 14-foot setback

from Norfolk Street. Member Curran noted that the application documents indicate a 14-foot setback from Norfolk Street (constituting a front lot line), and wanted to confirm the correct map on the application. Mr. Ingles confirmed that the October 16 map is correct, showing a 14-foot setback for the proposed pool location from the lot line adjacent to Norfolk Street. Mr. Ingles then presented an overview of the project, in which the property owner seeks to install a 16ft x 32ft in-ground pool, with no changes to the topography of the yard and no additional stormwater run-off anticipated. Member Curran then opened the floor for the receipt of public comment. Joseph Cioffi, Jr., 23 Norfolk Street, stated that he owned property directly across the street from this site; that the Debonis lot is a triangular-shaped lot; that the proposed pool is too close to Norfolk Street, and that he measured the exact distance from the street to the location of the proposed pool and it measured only 13 feet 1 inch; that the prior owner of this property had an above-ground pool in place for 30 years, but it had been torn down a few years ago; that the front setback requirement is 60 feet and that this proposal does not comply with zoning; that nothing would fit in this yard in compliance with the zoning due to the shape of the lot, and a variance would be required for whatever they proposed to do, but does recommend denial of the current application; that the proposal does not fit into the neighborhood; that the pool will be too close to the road and there would be no area for snow removal. Member Morin asked Mr. Cioffi how this project would affect his property. Mr. Cioffi stated that there would be a visual impact. Member Morin also noted that he had reviewed an aerial photo of this site which showed a chain-link fence on the property, and inquired whether that was still there. Mr. Cioffi stated that the chain-link fence had been there since 1970 or so, but that it had been removed within the last year. Member Curran inquired whether there were any written comments received by the Building Department on this application. Mr. Golden confirmed that no written comments had been received. Member Curran

than made a motion to close the public hearing, which motion was seconded by Member Morin. The motion was unanimously approved, and the public hearing closed. Mr. Ingles stated that the property owner had removed the chain-link fence as stated by Mr. Cioffi, and that the proposal was to put up a vinyl privacy fence around the complete perimeter of the yard; that the neighborhood had a lot of in-ground pools, and that this would be consistent with the neighborhood character; and that he had accurately measured the location of the pool from the shoulder of Norfolk Street, and the measurement is 14 feet, and not 13 feet 1 inch. Member Schmidt asked about the location of the proposed vinyl privacy fence. Mr. Ingles stated that it would be approximately 13 or 14 feet from the pool. Member Schmidt then asked whether the privacy fence will be put up directly on the shoulder of Norfolk Street. Mr. Ingles stated that the fence would be on the property line. Member Morin stated that this would potentially create an issue for snow removal, and that this fence would be too close to a town road. Mr. Golden discussed the Town regulations concerning fence location and public road right-of-way. Mr. Ingles stated that he would comply with the Town requirements for the location of the fence, but the final fence location would not impact the proposed pool location. Mr. Ingles also stated that in his opinion, the fence location would not create a snow storage problem since this stretch of Norfolk Street was fairly straight. Member Mainello stated that snow storage issues were likely at the road intersections, including the intersection of Norfolk Street and Seneca Street, but that snow storage should not be a problem where the privacy fence was being proposed. Mr. Ingles stated that he would work with the Town Building Department on final fence location. Member Schmidt asked about a shed location on the property. Mr. Ingles stated that the pool location was approximately 15 feet from the shed. Member Schmidt then stated the property owner should consider moving the shed, and then the pool could be relocated further away from Norfolk Street, which would reduce the extent

of the requested variance. Member Schmidt stated that he would be more comfortable with this proposal if the pool location were further away from Norfolk Street. There was extended discussion concerning the proposed size of the pool, potential relocation of the shed on the lot, relocation of the pool to be further away from Norfolk Street, and the discussion resulted in a reduction to the extent of the variance requested. Mr. Ingles stated that the pool could be relocated, and that the shed could be removed or relocated, or the pool could simply be moved closer to the shed, which would decrease the size of the variance request. There was discussion by the Board Members as to relocating the pool farther away from Norfolk Street, but still remaining in compliance with side setback requirements to the adjacent lot. Member Morin inquired whether there were any questions or concerns raised from the owners of the adjacent lot. It was confirmed that the owners of the adjacent lot had not provided any comments on the application. Attorney Gilchrist wanted to confirm that if the pool were shifted further away from Norfolk Street as discussed, whether the need for any other variances was triggered. Following extensive discussion, it was determined that the pool location could be shifted 10 feet further away from Norfolk Street, resulting in a pool location 24 feet from the shoulder of Norfolk Street, and still maintain setback requirements for all other lot lines. The Zoning Board Members concurred that the pool location 24 feet from the shoulder of Norfolk Street would be safer in terms of vehicular traffic and the pool use. Following this deliberation, the Zoning Board members stated that they were prepared to proceed with action on the application. It was noted that the application seeks a lot line setback variance for a residential use, constituting a Type II action under SEQRA. The Zoning Board members then reviewed the elements for consideration on the area variance request. 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, the Zoning Board members concurred

that there were many other pools in this neighborhood, that there were many accessory structures on lots in this neighborhood, and that this proposal would not change that character or create any detriment to any nearby properties. As to whether a feasible alternative was available, the Zoning Board members concurred that a reduction in the extent of the variance request was available, resulting in the proposed pool being shifted 10 feet further away from Norfolk Street, resulting in a setback from Norfolk Street of 24 feet; and that this lot being triangular in shape caused difficulty in that it also constituted a corner lot with two front lot lines adjacent to Seneca Street and Norfolk Street. As to whether the requested variance is substantial, the Zoning Board members did concur that a setback of 14 feet from the lot line adjacent to Norfolk Street was a substantial variance in light of the 60 foot setback requirement, but mitigated this to the extent of shifting the pool an additional 10 feet, resulting in a setback of 24 feet from what is considered a front lot line adjacent to Norfolk Street. As to whether the proposal would create an adverse environmental or physical impact, it was noted that no change in topography was being proposed, that no additional stormwater run-off would be created, and that the installation of a privacy fence would not result in any visual impact. As to whether the difficulty giving rise to the need for the variance was self-created, the Zoning Board members did note that this lot was a corner lot resulting in two front lot lines, which did give rise to the 60-foot setback requirement from Norfolk Street, and to the extent that this could be deemed a self-created hardship, this factor was relevant but not determinative on this application. Thereupon, in balancing the benefit to the applicant in granting the requested variance as opposed to any detriment to the Town in general and the neighborhood in particular, Member Mainello made a motion to grant the requested area variance subject to the condition that the location of the pool be adjusted to an additional 10 feet from Norfolk Street, resulting in a setback from the front lot line adjacent to Norfolk Street of 24 feet. Member Schmidt seconded

the motion, subject to the stated condition that the pool location be shifted an additional 10 feet from the lot line adjacent to Norfolk Street, resulting in a setback of 24 feet from the lot line adjacent to Norfolk Street. The motion was unanimously approved, and the area variance granted subject to the stated condition. Member Curran directed Mr. Ingles to continue to coordinate with the Brunswick Building Department on this matter.

Two items of new business were discussed.

The first item of new business discussed was an application for two area variances submitted by Joshua Laiacona for property located at 59 Tambul Lane. Mr. Laiacona was present. Member Curran requested Mr. Laiacona to review the proposal. Mr. Laiacona stated that he was proposing to install a 30-foot x 40-foot garage at the end of his driveway at 59 Tambul Lane, resulting in the need for a side-yard setback variance, and also for a variance for the location of an accessory structure in front of the primary structure on this lot. Mr. Laiacona confirmed that the side setback requirement was 25 feet, and that he is proposing to locate the new garage 10 feet from the side-yard line. The Zoning Board members reviewed the application materials, and deemed them complete for scheduling the public hearing. The public hearing on this application is scheduled for the December 21 meeting, to commence at 6 pm. Mr. Laiacona confirmed his consent for the Zoning Board members to access his property to review the proposed garage location.

The second item of new business discussed was a use variance application submitted by Martin and Ruth Gorton for property located at 3 Crescent Lane. Ruth Gorton was present. The Gortons are seeking a use variance to allow an accessory apartment in their existing home at 3 Crescent Lane. Mrs. Gorton explained that the prior owner of this property had used a portion of the home for a professional office, which had its own separate entrance; that when they purchased

the property, they added a door to the professional office area and made it part of their residential house; that they do not need this additional space for residential purposes at this point, and are looking to again divide off the area of the house that had been the professional office for use as an income-producing accessory apartment; that Mrs. Gorton was disabled and would no longer be working, and needed the income from the accessory apartment to maintain the property; that the existing driveway at this location had four total parking spaces available, to accommodate both the residence and the accessory apartment. Mr. Golden reviewed the Zoning map in this area, noting that an accessory apartment would have been an allowable use under the prior Brunswick Zoning Ordinance, but that the property had been rezoned as a result of the 2017 Brunswick Zoning Law, which no longer allows an accessory use as an allowable use for this property, which gives rise to the need for the current use variance application. It was noted that in the event the Zoning Board does grant the use variance on this application, a special use permit review by the Brunswick Planning Board will be required for the proposed accessory apartment. The Zoning Board members completed their review of the application materials, and deemed them complete for purposes of scheduling a public hearing. This matter is scheduled for public hearing at the December 21 meeting, to commence at 6:15 pm.

The Zoning Board members discussed holding a meeting at 5:30 pm, prior to the regular December 21 meeting to commence at 6 pm, for the purpose of entering into private session to seek advice of counsel on legal standards associated with the pending use variance application on the Blue Sky Towers III/Cellco/Verizon application.

The index for the November 16, 2020 meeting is as follows:

1. Debonis – area variance – granted with condition.
2. Laiacona – area variances – 12/21/20 (public hearing to commence at 6:00 pm).

3. Gorton – use variance – 12/21/20 (public hearing to commence at 6:15 pm).

The proposed agenda for the December 21, 2020 meeting currently is as follows:

1. Laiacona – area variances (public hearing to commence at 6:00 pm).
2. Gorton – use variance (public hearing to commence at 6:15 pm).
3. Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless – use variance and area variance.
4. Rashid – area variance (tentative).
5. Leon – use variance and use variance (tentative).