

TOWN OF BRUNSWICK ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180
Phone: (518) 279-3461 -- Fax: (518) 279-4352

DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on February 22, 2009, at 6:00 P.M.

Present at the meeting were: Mark Cipperly, Member
Caroline Trzcinski, Member
James Shaughnessy, Member
E. John Schmidt, Member
James Hannan, Chairman

Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:00 P.M.

The first item of business was approval of the minutes of the October, 2009, meeting. Member Shaughnessy noted an error in the last paragraph on the first page, third line of the paragraph. "16 feet six inches" should read "18 feet six inches". Member Trzcinski made a motion to accept the minutes as corrected. Member Shaughnessy seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of of WILLIAM J. DURIVAGE, owner-applicant, dated January 7, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with an existing swimming pool filter and an existing swimming pool shed on a lot located at 103 Menemsha Lane, in the Town of Brunswick, because the pool filter violates the rear yard setback in an R-25 District in that 25 feet is required and less than 1 foot is proposed, and because the pool shed violates the rear yard setback in an R-25 District in that 25 feet is required and 3 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

William Durivage appeared. He stated that he purchased the property in 1980. He had been told by the prior owner, his uncle, that the property line on his property followed the tree line created by some small trees planted by his neighbor on the south, Mr. Purcell. In 1984, he put in an above-ground pool. In 2002, he put in an in-ground pool, in the same place as the above-ground. He built a pool/screen house in 2004. All the time he thought that he was in full compliance with the setbacks. In 2006, his neighbor, Mr. Purcell had his property surveyed. As a result, he found out that his assumption about the property line between his land and that of Mr. Purcell was incorrect. The pool filter was actually located on Mr. Purcell's property. The pool house encroaches on the rear setback. He then moved the filter onto his own property, but just over the line and it still violates the rear setback. He was told by a pool company that it would cost him \$5,000.00 to move the pool filter. He has no written estimate. He wants to leave both the filter and the pool house

where they are. He thought he was in compliance when he built them. He acknowledged that he never obtained a building permit for the pool house. He mentioned in to the Building Inspector when he obtained the permit for the in-ground pool in 2004, and he thought the pool house was included.

Richard, Purcell, 93 Menemsha Lane, applicant's neighbor to the south, said that he is the person complaining. He stated that maps of his property going back to 1974 clearly show the property line. In 2006, he had only the line between his property and that of Mr. Durivage re-surveyed. Bill Darling did the survey. He put markers in the ground and also stakes depicting the boundary line. A few days later, the stakes were gone. He found the 3 stakes on the Durivage property and he tried to put them back. But he is not sure if they are now in the right place. He wants the Zoning Ordinance to be enforced. He was told by the Town that there is no permit for the pool house. He wants everything moved. Mr. Purcell submitted the survey map to the Board. He also submitted letters from the Town to Mr. Durivage dated August 15, 2006, April 4, 2008, September 8, 2009, and December 10, 2009. The letters essentially documented that the pool filter and pool house violated the rear yard setback and either needed to be moved or variances obtained.

Mr. Durivage said that he does not believe the filter still encroaches on Mr. Purcell's property. Mr. Kreiger said that he has not verified that. Mr. Purcell said that he can hear the pool pump and filter from his deck and from his kitchen. The Chairman told Mr. Durivage that he should get a written estimate regarding the cost of moving the filter. Mr. Durivage said he built in good faith. Mr. Durivage said he took the survey stakes down so he could mow the grass there, as he had been doing for years. He said he put metal stakes in the ground so he could mow over them. Member Shaughnessy said that he believed the survey maps handed up by Mr. Purcell were inconsistent.

Bob Mammon, 105 Menemsha, asked what was the point of this proceeding. Everyone in the area has gotten along well for years. He can understand that the sound of the pool filter is an issue, and that it would be an issue if the filter and pool house were on Mr. Purcell's property. Mr. Purcell said that the sound is not the issue. The issue is re-sale of his property. If the filter and pool house are left where they are, it will affect the value of his property. He and his wife are getting old and may want to sell soon, Also, there is a zoning law. It should be followed.

Member Shaughnessy made a motion to continue the public hearing to the March 15, 2010, meeting. Member Schmidt seconded. The motion carried 5 - 0.

The next item of business was consideration of the referral from the Town Board for a recommendation on the application of Brunswick Associates of Albany, LP, for an amendment of the Brunswick West Apartments planned development district. Dan Hershberg, Hershberg & Hershberg, the surveyor for the project, appeared. He handed up updated plans and maps to the Board. Mr. Hershberg summarized the project. He stated that the intention is to add 84 additional units to the 96 already existing. The project density will remain at about 9,000 sq. ft. per unit. The plan is to also add some garages to both new and existing apartment units. He stated that the Planning Board has given a favorable recommendation, and that he has worked closely with the Town Engineering Consultant and the fire companies to address their concerns about the project. The existing units at the apartment complex are currently full.

The Chairman stated that the Board would issue a written determination at the next meeting.

The next item of business was the Request for a Special Use Permit of NIAGARA MOHAWK POWER CORP., owner-applicant, dated January 14, 2010, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the upgrade and expansion of the existing National Grid North Troy Electrical Power Substation located at 166 Plank Road, in the Town of Brunswick, because public utility buildings for servicing the neighborhood are only allowed in an R-15 District by way of a special use permit issued by the Zoning Board of Appeals. Attorney Cioffi read the Notice of Public Hearing aloud.

Nick Spagnoletti, Project Manager, Tom Hall, Project Engineer, and Joe Kryzak, Right of Way Agent, appeared for National Grid. They explained that there is a problem with the long-existing power substation located at 166 Plank Road. The metal clad switchgear unit, which contains the relays, breakers and other necessary equipment, is very old and has been causing problems. There have recently been fires there. The switchgear unit needs to be replaced. A new, modern unit will be constructed some 60 feet to the east of the existing one. They will leave the existing switchgear unit in place and working until the new one is constructed and ready for use. When the new unit is operational, the old one will be scrapped. A new structure will be constructed where the existing switchgear unit is currently located. That new structure will be used to support wires running from the transformer to the new metal clad switchgear unit. Only this portion of the substation is being affected. The rest will remain unchanged. Pictures of the old switchgear unit and the one to be constructed were handed up to the Board.

Neither Mr. Kreiger nor the applicant's representatives knew whether there is an existing special use permit for the substation. It was noted that the substation has been there for many years and may pre-date the Zoning Ordinance. Mr. Kreiger advised that the County Planning Agency responded to the the referral by stating that local considerations should prevail.

The Board then reviewed the short-form EAF. One correction was noted on Question 7 of Part I. The amount of land affected initially is correct at .24 acres, but the amount of land ultimately affected should be .75 acres. The Board then turned to Part 2 of the EAF. It was noted that the project received clearance from the NYS Historic Preservation Office indicating that it would not affect cultural resources. It was further noted that the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service have indicated that the project would have no impact on State or Federal listed threatened or endangered species. It was also noted that the power station has long-existed and any visual impacts or impacts on community character already exist and that this project will not appreciably change what is now on the premises, except to improve its reliability. The Board did not identify any adverse environmental impacts. Member Hannan then made motion to issue a negative declaration of environmental significance under SEQRA. Member Shaughnessy seconded. The motion carried 5 - 0.

The Board then turned to consideration of the special use permit criteria. The Board found that the project is reasonably necessary for the public health and welfare because this substation provides electrical power to a portion of the town and must therefore be reliable. The Board also found that the facility is appropriately located, noting that the facility is long-existing and there have been no problems regarding its location. The Board found that there is adequate parking at the

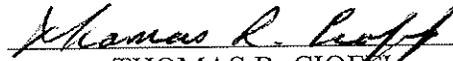
facility, noting that it is not open to the public. The Board found that the project will have no effect on neighborhood character or property values, noting, again, that the power station has long-existed and any such effects already exist. The Board also found that the project would not result in any traffic problems, noting that the facility is not open to the public.

Member Hannan then offered a Resolution granting a special use permit as requested, allowing the replacement of the failing, outdated, metal switchgear structure at the existing Niagara Mohawk North Troy Power Substation located at 166 Plank Road with a new switchgear unit at a new location on the same premises, all as set forth in detail in the supporting documents submitted to the Town in support of the application under cover dated January 15, 2010. Member Schmidt seconded. The matter was put to a vote and all members voted in the affirmative. The Resolution was declared adopted.

There being no further business, Member Shaughnessy made a motion to adjourn. Member Trzcinski seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
March 8, 2010

Respectfully submitted,


THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary