Zoning Board of Appeals

TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD February 23, 2015

PRESENT MARTIN STEINBACH, CHAIRMAN, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CAROLINE TRZCINSKI.

ALSO PRESENT was DAN BRUNS, Brunswick Building Department.

Chairman Steinbach noted for the record that the area variance application submitted by Kent for property located off Banker Avenue is adjourned and will be placed on the agenda for the March 16 meeting.

The Zoning Board members reviewed the draft minutes of the January 26, 2015 meeting. Upon motion of Member Trzcinski, seconded by Member Schmidt, the draft minutes of the January 26, 2015 meeting were unanimously approved without amendment.

The first order of business on the agenda was the area variance application submitted Christian McGrath for property located at 205 Bulson Road. The applicant was present at the meeting, together with his attorney Kenneth Bruno, Esq. Chairman Steinbach noted that the Public Hearing had been closed at the January 26, 2015 meeting, and that the matter was ready for deliberation. Member Shover confirmed that he had the opportunity to review all of the application documents, minutes of Zoning Board meetings at which the application was discussed, and the record of proceedings and the decision of the Zoning Board on the prior area variance application submitted by Mr. McGrath for this property, and that he was prepared to participate in the deliberations and action on this application. Attorney Gilchrist noted for the record that this application seeks an area variance for a residential use, and is therefore a Type II action under the

State Environmental Quality Review Act, and no further action under SEQRA is required. Attorney Gilchrist then generally reviewed the legal standard for area variances with the members of the Zoning Board. The Zoning Board members first discussed whether the requested area variance would result in an undesirable change in the character of the neighborhood, or create a detriment to nearby properties. Member Trzcinski felt that this would create a detriment to the neighborhood. Chairman Steinbach noted that there were a number of comments from the public concerning the impact the addition to the house at this location would have on the ability to conduct agricultural activities on the adjacent property as well as the potential development of that adjacent property for residential purposes. Member Schmidt stated that while the adjacent property owned by Cipperly is a cornfield, the use of property for agricultural purposes is as important for farmers as residential construction is on other properties; that based on his experiences as a farmer, there will be trouble for anyone farming the Cipperly lot when working so close to a residential structure; that there will inevitably be issues associated with the spreading of manure and pesticides or other fertilizers in an area that is so close to a residential structure; and that agricultural uses in the Town should be promoted and that the adjacent Cipperly property had been used for agricultural purposes prior to this addition to the residence at 205 Bulson Road. As to the issue of whether the benefit sought by the applicant through the area variance could be achieved by some other feasible method, Chairman Steinbach stated that an alternative was available and that the location of this addition could be changed to another part of the lot. Member Trzcinski stated that the addition could have been put on the other side of the house or to the rear, and that the need for any variance could have been avoided if the applicant had properly applied for a building permit in the first instance. Member Trzcinski noted that if the applicant had properly applied for a building permit for this addition, the required setbacks would have been discussed at that time, and a different location

was available on this lot for an addition to the existing house. As to whether the requested area variance is substantial, Member Trzcinski felt that the requested variance is substantial, since the Brunswick Code requires a twenty-five foot setback for this property, and that the structure would be located only ten feet from the lot line, resulting in a variance of fifteen feet. Chairman Steinbach concurred that the variance was substantial, as it was more than 50% of the required setback. Member Schmidt stated that while the applicant did reduce the extent of the requested area variance from his prior application, the current area variance request was still substantial. Member Schmidt also noted that in his opinion, the amount of the variance at issue here would be deemed less substantial if it were in an urban area or there was less room on a lot to put an addition, but that in this case, the lot is much larger and there were alternatives available and this factors into his determination that the variance is substantial in this case. As to whether the requested area variance will have an adverse effect on the physical or environmental conditions in the neighborhood, Member Schmidt stated that he felt the addition to this residential structure being located only ten feet from an adjacent lot on which agricultural operations are occurring would affect any ongoing agricultural activities on that property, and also felt that the farming operations, including use of heavy equipment, in such close proximity to a residential structure would have an adverse effect on environmental conditions, including noise generation. Chairman Steinbach also had concern regarding the use of pesticides or other fertilizers on the existing agricultural property being so close to a residential structure. As to whether the difficulty requiring an area variance was self-created, all of the Zoning Board members concurred that the situation was self-created by the applicant failing to have properly applied for a building permit before the start of any construction on the addition to the house. Attorney Gilchrist advised the Board that the elements reviewed during the Zoning Board's deliberations should be weighed by the Board, and that the Board

needed to weigh the benefit to the applicant if the area variance was granted as against any detriment to the general health, safety and welfare of the community in general and the neighborhood in particular. Chairman Steinbach asked the Zoning Board members whether there were any further comments or questions. Chairman Steinbach did note that this was a difficult situation, and that the Board should be balancing the need to comply with existing Town guidelines without significantly infringing on the right of private property owners to use their property. Member Schmidt stated that if this was viewed just as an addition to a residence in isolation, there may not be any opposition to the application, but that this was going to result in an impact to the agricultural operations on the adjacent parcel, and that this should be taken into account by the Zoning Board Members. Chairman Steinbach inquired as to whether anyone sought to make a motion to act upon the application. Member Schmidt made a motion to deny the area variance application based on the deliberations held by the Zoning Board. Member Trzcinski seconded the motion. The motion was unanimously approved, and the area variance denied. The Zoning Board directed Attorney Gilchrist to prepare a formal written decision based on the Zoning Board's deliberation and vote for review by the Zoning Board at its March 16 meeting.

The next item of business on the agenda was the area variance application submitted by Jordan Munn for property located at 10 Ledgestone Road. Jordan Munn was present. Chairman Steinbach requested the applicant to generally review the application, and whether there were any changes or additions to the application since the January meeting. Jordan Munn stated that she is seeking to have a shed installed on her property, that the size of the shed is now set at twelve feet by sixteen feet which is less than what was discussed at the January meeting, that the location of the shed had generally not changed and that it would be approximately one to two feet from the rear property line, and that she felt there were no other alternate feasible locations on her property

to put the shed and handed up to the Zoning Board a schematic map showing general locations of septic tank and leach field, a hill, and front yard locations on her property which were not conducive to putting the shed, and requested that the area variance be granted. Chairman Steinbach inquired as to the height of the shed. Ms. Munn stated the shed would be less than twelve feet in height. Chairman Steinbach asked whether an exact location of the shed had been determined. Ms. Munn stated that the exact location had not been determined due to the amount of snow cover on the ground, but that it would generally be about one to two feet from the rear property line, but could be as much as five to six feet depending on final layout after the snow had melted. The Chairman noted that the Zoning Board would open its public hearing on this application. The Notice of Public Hearing was read into the record, noting that the Hearing Notice had been published in the Troy Record, placed on the Town sign board, placed on the Town website, and mailed to all property owners within five hundred feet of the applicant's property. Chairman Steinbach then opened the floor for receipt of public comment. John Elliot, 29 Pickering Lane, stated that he just had a few questions concerning the application. Mr. Elliot wanted to confirm exactly where his property was located in relation to the proposed location of the shed. This was reviewed by Ms. Munn and Mr. Elliot and it was determined that his lot is not adjacent to the Munn lot. Mr. Elliot stated that he now knew the shed would be twelve feet by sixteen feet in size, and had no comment on the size of the shed. Mr. Elliot did inquire as to whether this would be a pre-made shed or whether the shed would be constructed on site. Ms. Munn stated that the shed would be constructed on site, but its final appearance would resemble a pre-made shed. Mr. Elliot asked whether there would be a concrete pad on which the shed was located. Ms. Munn stated that there would not be a concrete pad, and that the shed would be placed over a gravel surface. Mr. Elliot concluded by stating that if the shed is only one foot off the property line, Ms. Munn would need

to be careful regarding installation and maintenance so as not to go onto her neighbor's property. Chairman Steinbach inquired whether there were any further public comments. Hearing none, Chairman Steinbach stated he would entertain a motion to close the Public Hearing. Member Schmidt stated that he would like to know whether the Zoning Board could wait until its March meeting to act on this application, since he would like to go to the site without the snow cover. Member Clemente stated that she did go to the site, and got a good impression of the general location of the proposed shed and topography of the site, as well as the distance between the shed location and the adjacent neighbor (Battu), and that the closest house to the shed location was actually not the adjacent property owner but another property owner, Canzarri. Ms. Munn stated that Mr. Canzarri had no opposition to the shed location. Member Clemente also stated that the proposed shed location would be symmetrical with the back of the house. Member Clemente also stated that a lot of the surrounding land was wooded, and that certainly during the spring, summer, and fall seasons, it was unlikely that anyone would be able to see the shed from adjoining properties. Member Trzcinski also noted that there was no one speaking in opposition to this variance application at the Public Hearing. Member Steinbach felt that the Zoning Board could proceed with the application. Member Shover then made a motion to close the Public Hearing, which motion was seconded by Member Trzcinski. The motion was unanimously approved and the Public Hearing closed. Chairman Steinbach then stated that the Zoning Board was in a position to move forward on the application. Attorney Gilchrist stated that the application sought an area variance for a residential use, and constituted a Type II action under the State Environmental Quality Review Act, and at no further action under SEQRA was required. The Zoning Board then generally reviewed the elements for area variance, concluding that the area variance in this case would not result in any undesirable change in the character of the neighborhood nor create a

detriment to nearby properties; that given the location of the septic areas and configurations of this lot, there were no feasible alternative locations for a shed on the lot; that the area variance in this case is substantial, but this factor alone is not determinative; that the area variance in this case would not create an adverse effect on the physical or environmental conditions in the neighborhood; and that the difficulty is not self-created given the limitations of the lot. Chairman Steinbach asked whether there was any further discussion. Member Schmidt stated that he was not comfortable with an area variance allowing a shed to be placed one foot from the rear property line, and that there should be at least a few more feet for purposes of access to the rear of the shed as well as maintenance. Member Schmidt felt that there should be room for access as well as maintenance around the shed. The Zoning Board members generally discussed the location of the shed, the property line, maintenance responsibilities, and the fact that this shed location should not infringe on the adjacent property. Ms. Munn stated that she was not opposed to placing the shed a minimum of three feet off the property line as a condition to any action by the Board. Member Shover then made a motion to approve the area variance subject to the condition that the shed be placed a minimum of three feet off the rear property line. Member Clemente seconded the motion subject to the stated condition. The motion was unanimously approved, and the area variance granted subject to the stated condition.

One item of new business discussed.

An application for area variance has been submitted by Robert and Carly Waters for property located at 22 Cooper Avenue. Mr. and Mrs. Waters were present. Chairman Steinbach requested the applicant to describe the requested variance. Mrs. Waters stated that they were seeking to install an in-ground pool in the rear yard at their property, and that given the location of the house with an attached deck and the configuration of their rear yard, they were seeking to

have the pool located fifteen feet from the rear lot line as opposed to the twenty feet required under the Town Code. Mrs. Waters confirmed that there was a six foot vinyl fence around the entire property. The Zoning Board members generally reviewed the application materials, including the schematic layout of the lot, showing the house and deck location and proposed location of the in-ground pool. The Zoning Board members confirmed that the application was complete for purposes of scheduling the Public Hearing. A Public Hearing will be held on this application on March 16, 2014 at 6 p.m.

The index for the February 23, 2015 meeting is as follows:

1. Kent – area variance – March 16, 2015.
2. McGrath – area variance – Denied (written decision to be reviewed at March 16 meeting).
3. Munn – area variance – Granted with condition.
4. Waters – area variance – March 16, 2015 (Public Hearing to commence at 6 p.m.).

The proposed Agenda for March 16, 2015 meeting currently is as follows:

1. Kent – area variance.
2. Waters – area variance (Public Hearing to commence at 6 p.m.).