

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

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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 September 15, 2003, at 6:00 P.M.

Present at the meeting were: John Schmidt, Member (arrived late)
Amy Serson, Member
Caroline Trzcinski, Member
Joseph Jabour, Member
James Hannan, Chairman

Also present were, Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and John Kreiger, Superintendent of Utilities & Inspections.

At approximately 6:05 P.M., the meeting was called to order. Member Schmidt was not present when the meeting began. The first item of business was approval of the Minutes of the August 18, 2003, meeting. Member Serson made a motion to approve the Draft Minutes as submitted. Member Jabour seconded. The motion carried 4 - 0.

The next item of business was the appeal and petition of GERALD and JOSEPHINE VIEN, owners-applicants, dated August 19, 2003, for an area variance, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a storage shed on a lot located at 146 Brunswick Road, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-15 District in that 15 feet is required but 18 inches is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Gerald Vien stated that his neighbors are not opposed to their application. Where he is asking to put the shed is the only flat place he has. He handed up photos showing the shed. He stated that it looks better near the property line. No one from the public wished to comment. Member Jabour stated that he lives around the corner from the Viens. He confirmed that the location of the septic system precludes locating the shed anywhere else. Member Trzcinski questioned why the shed was already built. Mr. Vien said that he had asked Mr. Austin, the former Building Inspector, some time ago, about building the shed. Mr. Austin told him if the shed was not built on a foundation, no permit was required. Mr. Vien understood this to mean he could go ahead. He was not focused on the setbacks. The adjoining neighbor had no problem with it.

Member Jabour made a motion to classify the matter a Type 2 action under SEQRA. Member Serson seconded. The motion carried 4 - 0. Member Trzcinski thereupon offered the following Resolution:

BE IT RESOLVED, that with regard to the appeal and petition of GERALD and JOSEPHINE VIEN, owners-applicants, dated August 19, 2003, for an area variance, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a storage shed on a lot located at 146 Brunswick Road, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-15 District in that 15 feet is required but 18 inches is proposed., the Zoning Board of Appeals:

1. Finds and determines as follows:

- a) That the variance will not result in an undesirable change in the community, or a detriment to nearby properties, or have an adverse effect on the environmental conditions in the neighborhood;***
- b) That the relief requested cannot be obtained except by way of an area variance;***
- c) That the variance is not excessive given the circumstances and the neighborhood; and***
- d) That the need for the variance was not self-created.***

2. Grants the variance as requested .

Member Jabour seconded. The proposed Resolution was then put to a vote as follows:

<i>Member Jabour</i>	<i>Aye</i>
<i>Member Serson</i>	<i>Aye</i>
<i>Member Schmidt</i>	<i>Absent</i>
<i>Member Trzcinski</i>	<i>Aye</i>
<i>Chairman Hannan</i>	<i>Aye</i>

The foregoing Resolution was thereupon duly adopted.

The next item of business was the appeal and petition of DAVID and PATRICIA BLACKMAN, owners-applicants, dated August 15, 2003, for an area variance, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a carport on a lot located at 25 Colehamer Avenue, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-15 District in that 15 feet is required but 4 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

David Blackman appeared. He had nothing to add. No one from the public wished to comment. Member Serson made a motion to classify the matter a Type 2 action under SEQRA. Member Trzcinski seconded. The motion carried 4 - 0. Member Jabour thereupon offered the following Resolution:

BE IT RESOLVED, that with regard to the appeal and petition of DAVID and PATRICIA BLACKMAN, owners-applicants, dated August 15, 2003, for an area variance,

pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a carport on a lot located at 25 Colehamer Avenue, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-15 District in that 15 feet is required but 4 feet is proposed, the Zoning Board of Appeals:

1. Finds and determines as follows:

- a) That the variance will not result in an undesirable change in the community, or a detriment to nearby properties, or have an adverse effect on the environmental conditions in the neighborhood;*
- b) That the relief requested cannot be obtained except by way of an area variance;*
- c) That the variance is not excessive given the circumstances and the neighborhood;
and*
- d) That the need for the variance was not self-created.*

2. Grants the variance as requested .

Member Jabour seconded. The proposed Resolution was then put to a vote as follows:

<i>Member Jabour</i>	<i>Aye</i>
<i>Member Serson</i>	<i>Aye</i>
<i>Member Schmidt</i>	<i>Absent</i>
<i>Member Trzcinski</i>	<i>Aye</i>
<i>Chairman Hannan</i>	<i>Aye</i>

The foregoing Resolution was thereupon duly adopted.

The next item of business was the appeal and petition of RAY DARLING o/b/o GERALD COLMAN, applicant, dated July 25, 2003, for an interpretation as to whether, pursuant to the Zoning Ordinance of the Town of Brunswick, the applicant may construct an accessory structure consisting of a garage/equipment storage building on a lot located on the west side of Creek Road (Tax Map No. 102-4-2), in the Town of Brunswick, on which there is no principal building. Attorney Cioffi read the Notice of Public Hearing aloud.

Ray Darling appeared. He stated that this is a large parcel of land. None of the adjoining property owners would be able to see the building from their homes. Dr. Colman wants to have the building to store equipment which will be used to maintain the property.

Tony Iannacito, 11 Grandview Drive, was concerned that the building would be used as a business or for commercial purposes. He expressed concern that Dr. Colman would not be living there. Bob Spilker, 229 Creek Road, stated that, as an adjoining property owner, he had no problem with the building. The entrance to the proposed building site was well done and he is pleased that the property will not be subdivided, and that Dr. Colman will eventually relocate there. Rick Lindsay, 11 Ethier Drive, stated that he has no problem with the building. Dr.

Colman is a nice man and it is good that he wants to maintain the property.

Gerald Colman, 187 Euclid Avenue, Albany, New York, stated that he has owned the property for 25 years. He wants to grow some crops there. He wants to have a building so he can store a tractor and brush hog on the property. He has no commercial intentions for the building.

The Chairman noted that Dr. Colman came before a Board a few years ago with a similar request and the Board turned it down. Dr. Colman said that he now proposes that the building sit in a big hollow where it cannot be seen and will not bother anyone. This is different from his previous application. Ray Darling stated that he made the application in this case because he is a friend of Dr. Colman. He noted that, originally, Dr. Colman planned on accessing the proposed building directly from Grandview Drive. Now he has built a driveway. Tony Iannacito again expressed concern that the building would be rented out as storage space for others. Also, that it would encourage ATV use on the property.

Dr. Colman stated that it is likely he will build a residence there within the next few years. It will not be his primary residence. Dr. Colman stated that he has used a roto-tiller on the property 3 or 4 times within the past 5 years. Mr. Iannacito disputed that. Dr. Colman stated that he brush hogged the property once in the past 5 years. He has had a garden there within the past 5 years. At present, he has to bring his equipment in on a trailer.

The Chairman stated that he would like to leave the hearing open so he can review the previous application and the Board's prior ruling. Dr. Colman stated that he just wants to use his land to plant some corn and potatoes. He will use less than an acre. Tony Iannacito said that, at present, only snowmobilers use it. Jane McDermott, 169 Carroll's Grove Road, said that she is in favor of it. It is a very small building on a large parcel. She knows people who use the property now.

Attorney Cioffi explained that the issue before the Board is essentially legal in nature; i.e., whether you can, under the Town's Zoning Ordinance, have an accessory building, such as the proposed equipment storage building, on a lot where there is no primary structure, such as a home. In the past, the Board has ruled that you cannot. Only in one case did the Board permit an accessory structure to be placed on a lot without a primary structure, and in that case, the lot was directly across the street from the applicant's residence, and, by deed, the applicant essentially "merged" the lots by providing that neither lot could be conveyed without the other. Bob Spilker stated that what Dr. Colman is requesting is responsible.

Member Jabour made a motion to continue the public hearing to October 20, 2003. Member Trzcinski seconded. The motion carried 4 - 0. Member Schmidt arrived just before the vote and did not take part.

The next item of business was further consideration of the appeal and petition of the LEONARD DUNCAN and RUTH DUNCAN, owners-applicants, dated June 16, 2003, for a use variance, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed use of vacant land adjacent to 151 McChesney Avenue, in the Town of Brunswick, for commercial self-storage units, because the proposed commercial use is only allowed in an R-25

District upon the issuance of a use variance by the Zoning Board of Appeals.

Paul Engster, Esq., appeared for the applicants. Attorney Cioffi read into the record two letters he received from adjoining property owners, Mr. & Mrs. Robert Hepp, 166 McChesney Avenue, and Bernice & Janet Kuhl, 170 McChesney Avenue. Attorney Engster offered for the record an evaluation of the property he had done by Garry Doyle Real Estate, 24 Second Street, Troy, New York. Attorney Engster explained that Mr. Doyle could not appraise the 2.59 acre parcel since it is presently farmland and he could not find any comparables that small. Mr. Doyle concluded that you could not sell the property as a single family residence due to its proximity to the farm.

Mr. Engster said that although they do believe they could sell the property for residential use, it is still their position that they should not have to do so. They should be able to earn a living from their property. It is their position that the Duncan's are suffering from a hardship. They have been trying to make ends meet since 1995. They anticipate losing the heifer business. He feels they have proven all of the criteria for a use variance.

Attorney Cioffi asked whether the applicants wished to present anything further. Mr. Engster indicated they did not. The Chairman inquired how this business would be financed if the Duncan's had such limited income. Mr. Engster said that the revenue from the business would be sufficient to pay the debt incurred to build the storage buildings. The Board indicated that it would issue a written Decision. Member Jabour made a motion to close the public hearing. The Chairman seconded. The motion carried 5 - 0.

There being no further business, Member Jabour moved to adjourn. The Chairman seconded. The motion to adjourn carried 5 - 0, but immediately thereafter, it was noted that the Board failed to act on an application for an area variance filed on behalf of Stewart's Shop Corp., located at the intersection of Routes 2 & 278. The applicants failed to appear as scheduled at the August meeting and the Board then indicated that the application would be dismissed if they did not appear this evening. No one from Stewart's was present and no one called. Member Serson thereupon offered a motion to deny the variance. The Chairman seconded. The motion carried 5 - 0. Member Serson then made a motion to adjourn. The Chairman seconded. The motion carried 5 - 0 and the meeting was thereupon adjourned.

Dated: Brunswick, N.Y.
October 10, 2003

Respectfully submitted,

THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary