

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 April 19, 2010, 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 March, 2010, meeting. There were no changes noted. Member Shaughnessy made a motion to accept the minutes as submitted. Member Schmidt seconded. The motion carried 5 - 0.

The next item of business was further consideration of the appeal and petition of MICHAEL F. FINK, owner-applicant, dated February 18, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the repair, expansion and conversion of an one-car garage into a two-car garage on a lot located at 21 East Road, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-40 District in that 25 feet is required and 6.4 feet is proposed. Mr. Fink appeared. He submitted to the Board a letter from the affected adjoining property owner explicitly consenting to the variance. Attorney Cioffi read the letter dated March 22, 2010, from Fadhilika Atiba-Weza, into the record. There were no further questions or any further discussion.

Member Schmidt made a motion to classify this matter a Type 2 action under SEQRA. Member Shaughnessy seconded. The motion carried 5 - 0. Member Trzcinski thereupon offered a Resolution granting the area variance. Member Schmidt seconded. The Resolution was adopted by a vote of 5 - 0.

The next item of business was further consideration of the appeal and petition 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.

Robert Hess, Esq., appeared, representing Mr. Durivage. He handed up to the Board a written submission in support of the variance request. He noted that a survey of the property line has recently been completed. The pool house overhang and the pool pump appear to be the problems here and neither thing is visible from Menemsha Lane. Accordingly, he stated, impact on the public is really not an issue. He also noted that there is a large stand of trees between the offending structures and Mr. Purcell's property, which alleviates the visual and aesthetic impact of those structures on the Purcells. He further opined that moving the pump in order to comply with the setbacks may actually result in moving it closer to the Purcells' house. They have made several proposals to the Purcells to purchase some land so they can be in compliance with the setbacks. The Purcells have refused to sell. The cost to move the pump, based on estimates they have received, is \$5500.00. The cost to remove the pool house overhang is \$3500.00. They are willing to install a fence to shield these structures from the Purcells' view. The variances requested are not substantial given the circumstances. While the need for the variances was self-created by Mr. Durivage, he built where he did in good faith, believing he was building on his own property and in compliance with the setbacks. They believe the Purcells were also confused about the property line, as they never complained when the structures were being built. Mr. Hess stated that they do not believe that the pool pump is a structure as defined in the Zoning Ordinance, and that it therefore does not need to meet the setbacks.

The Chairman noted that the pool house was built without a building permit. Mr. Kreiger stated that the original building permit for the pool allowed for a movable screen house. The current pool house was built later and does not have a building permit or approval. Member Schmidt said that he is concerned that the proposed variances are significant from the property lines. Also, the offers made by Mr. Durivage to purchase some land from the Purcells were not large enough under the circumstances. Mr. Durivage said that a realtor told him what to offer, but he did not submit anything in writing from the realtor. Mr. Hess said that the offers were based on market value.

Attorney Cioffi asked why it was so costly to move the pool pump now. He moved it previously on his own, from the Purcell property onto his own, but still within the setback. He said moving the pool filter off Purcells' property was a small job. He did not have to dig up any lines or valves. The only thing actually on Purcells' property was half of the filter tank. He just had to cut into a plastic line and install an elbow. Mr. Durivage stated that Mr. Kreiger told him at the time it would probably be acceptable if he just moved the pool filter off the Purcells' property. Mr. Kreiger confirmed that he said that.

Richard Purcell stated that if the trees block his view of the pool house and pool pump so well, why is Durivage willing to install a fence. He also noted that Durivage has been planting trees on the Purcell property for some time, and he does not want them there. There are more than a dozen trees planted on his property by Durivage that he wants removed. They want the full 25 foot setbacks to be respected. There were always property line markers in the ground. Durivage must have known he was not building on his own property. They never checked the property line when Durivage was building things. They assumed he was complying with the law.

The Chairman stated that he wondered whether there was some way the Purcells and the Durivages could compromise this. The Chairman made a motion to recess briefly to allow the

Members to review the materials just submitted. Member Cipperly seconded. The motion carried 5 - 0. After a brief recess, Member Shaughnessy made a motion to return to session. Member Cipperly seconded. The motion carried 5 - 0.

Attorney Hess advised the Board that, during the recess, the Purcells and the Durivages agreed to a solution to their dispute which they would the Board to consider in resolving the instant grievance requests. The proposed resolution is as follows:

1. As to the pool pump and filter, Mr. Durivage will move it so that it is set back at least 15 feet from the property line. This would include the pump, filter, heater, and all above-ground appurtenances, including the concrete slab.

2. Mr. Durivage will remove five (5) trees to be selected by the Purcells from the Purcell property, within a time frame to be set by the Board.

3. The Purcells would waive and withdraw any complaint or objection to the pool house overhang remaining where it is, on the Durivage property, some two feet from the property line.

Mr. Purcell agreed that that was the understanding.

Member Trzcinski made a motion to go into private session to ask legal questions of the Town Attorney. Member Schmidt seconded. The motion carried 5 - 0. No action was taken in the private session. The Board Members made various legal inquiries of the Town Attorney. Member Shaughnessy made a motion to return to regular session. Member Trzcinski seconded. The motion carried 5 - 0.

Attorney Cioffi advised that it was the Board's preference that the parties agreement and understanding as outlined by Mr. Hess be reduced to writing, signed by the parties, and submitted to the Board within two weeks of today's date. The Board's intention would then be to close the public hearing and issue a decision on the variance requests, taking into account the agreement and understanding of the parties. The matter was adjourned to May 17, 2009, for further proceedings.

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

Dated: Brunswick, N.Y.
May 3, 2010

Respectfully submitted,

THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary