

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 August 16, 2010, at 6:00 P.M.

Present at the meeting were: John Schmidt, Member
Martin Steinbach, Member
Mark Cipperly, Member
Caroline Trzcinski, 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 July, 2010, meeting. The Board decided to defer the matter to the next meeting.

The next item of business was the appeal filed by OAKWOOD PROPERTY MANAGEMENT, LLC, from a Notice of Violation issued by the Code Enforcement Officer pursuant to the Zoning Ordinance and Site Plan Review Act of the Town of Brunswick, in connection with appellant's business activities located at 215 Oakwood Avenue. Attorney Cioffi explained to the Board that the matter was not on the agenda for a public hearing this evening. There was insufficient time after the appeal was filed to notice a hearing for tonight. Rather, the matter is on the agenda for procedural purposes only.

Member Steinbach stated that he wished to recuse himself from any involvement in the consideration of this appeal. He explained that he lives in the neighborhood affected by Oakwood's business activities, and also signed a petition urging the Town to require Oakwood to cease operations. Member Steinbach thereupon left the meeting room. Member Schmidt then stated that the Gallivan Corporation, which is related to Oakwood Property Management LLC, submitted a bid to do some work on his family farm. The bids were not solicited by his farm and his farm is not paying for the work. The bid has not been awarded at this time. He does not believe there is any conflict, at least at this time, for him to be involved in this appeal. Chairman Hannan also stated that he and his son do a limited amount of work with the Gallivan Corporation. He explained that occasionally in the course of his waste disposal business, he needs to dispose of trees, wood and brush. They pay the Gallivan Corporation to take the refuse. This year, to date, he has done \$900.00 worth of business with Gallivan. Not a lot of money is involved. He does not believe that is sufficient to require him to recuse himself. If someone has a problem with that, he will give it further consideration.

With that, Attorney Cioffi stated that the first procedural issue for the Board was scheduling the public hearing on the appeal. The Board decided to hold the public hearing at the September meeting of the Board, which would be held on Tuesday, September 21, 2010. Member Trzcinski made a motion to schedule the public hearing for September 21, 2010. Member Schmidt seconded. The motion carried 4 - 0. Attorney Cioffi explained that the other issue involved referral of the appeal to the Planning Board for a recommendation. Attorney Cioffi explained that the Zoning Ordinance provides that once an appeal is filed, the matter should be referred to the Planning Board for a recommendation. Member Trzcinski made a motion to refer the appeal to the Planning Board for a recommendation. Member Schmidt seconded. The motion carried 4 - 0. Member Steinbach then returned to the meeting room.

The next item of business was the appeal and petition of IAN BAUMES, owner-applicant, dated July 29, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed conveyance of a portion of Tax Map ID No. 91-2-25.22, located at 44 Betts Road, in the Town of Brunswick, to an adjoining property owner, because the proposed conveyance will result in the size of the remaining portion of said lot being 27,935 sq. ft., which is below the minimum lot size in an A-40 District of 40,000 sq. ft. Attorney Cioffi read the Notice of Public Hearing aloud.

Attorney William Doyle, 317 Brick Church Road, appeared. He stated that he had been authorized by Mr. Baumes to appear and request this variance. Mr. Doyle explained that he is representing Berkshire Properties LLC in connection with an application for the establishment of a planned development district on 25 acres of land located at NY Route 7 and Betts Road. That PDD application involves commercial office space, retail space, and the transfer of some of the land adjacent to the Little League to the town. In addition, the PDD involves the creation of seven single family building lots. That matter is current before the Planning Board and an issue arose as to access. The Baumes parcel is actually in two pieces, split by Betts Road. The parcels are separately described on the same deed. Berkshire Properties LLC wants to buy the smaller of the two parcels, and use it for access to the building lots and other parts of the proposed PDD. The parcel in question is vacant land. Baumes' house, well, septic system, etc., are all on the larger parcel. When Berkshire Properties asked the Planning Board for a Subdivision Waiver, allowing them to purchase the smaller Baumes parcel, the Planning Board advised that doing so would render the remaining Baumes parcel undersized. Hence, a variance is being requested from this Board, permitting the undersized parcel to exist. Attorney Doyle explained that there are practical difficulties with the smaller Baumes parcel. The owner really can't do anything with it. It is too small to build on. His house and other infrastructure are on the larger parcel. Berkshire Properties is willing to pay Mr. Baumes \$32,000.00 for the parcel. If allowed, it would be annexed to other adjacent Berkshire Properties lands. It would not be a separate lot. Permitting the sale would be a tremendous benefit for Mr. Baumes. It would also solve the access issue for the Berkshire Properties PDD.

Mr. Doyle said that he was not aware of any other undersized lots in the area. He further stated that the septic system on the larger Baumes parcel was intact and functioning. The Board opened the matter for public comment. Norm Fivel, Wilrose Lane, stated that he wanted to make clear that approval of this variance by the Board does not constitute approval of the underlying PDD, or a determination that the PDD should be approved. Attorney Cioffi stated that this

application was different from the usual applications received by the Board involving undersized lots. Usually, the owner of a lot too small to build on under zoning rules asks for a variance permitting the building in any event. Here, we have a zoning compliant lot, and the owner is asking for permission to sell off part of it, causing it to become undersized, for the purpose of benefitting the owner and an adjoining owner. He suggested that, since the matter has already been to the Planning Board, this Board formally request the Planning Board to make a recommendation. Member Schmidt so moved. Member Steinbach seconded. The motion carried 5 - 0. The matter was put over to the September Meeting for further proceedings.

The next item of business was further proceedings in the appeal and petition of CHARLES D. ALUND, JR., owner-applicant, dated April 13, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a Storage/Garden Shed on a lot located at 63 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the front yard setback in an A-40 District in that 75 feet is required and 42 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 7 feet is proposed.

Charles D. Alund, Jr., appeared. A series of pictures was submitted to the Board showing the existing conditions on the Alund lot. It was noted that, since the last meeting, Mr. Kreiger and Member Cipperly met at the site with Mr. Alund and Robert Nelson, the adjoining neighbor. Mr. Kreiger stated that they walked the entire site and took some measurements. He noted that the existing shed on the Alund property is more of a child's playhouse. Member Cipperly stated that he was not comfortable with the shed being sited underneath the power lines which cross the Alund property. Mr. Kreiger and Member Cipperly felt that the proposed location for the shed could be moved 4 - 5 feet toward the rear of the Alund property away from the Alund - Potter property line. The proposed location for the shed would, essentially, be moved diagonally toward Alund's house and to the rear. If this were to be done, the front setback would have to be reduced from 75 feet to 47 feet, and the rear setback reduced from 25 feet to 12 feet. The shed would then be 8 feet from the power lines. Mr. Kreiger and Member Cipperly stated that the concrete slab built by Mr. Alund without a permit would have to be removed. Mr. Alund said that this proposal was generally acceptable to him. Mr. Alund also agreed to put in two mature trees to serve as a buffer between the shed and the Nelson/Potter property. It was noted that none of this was satisfactory to Mr. Nelson at the site visit. Neither Mr. Nelson nor Ms. Potter was present at this meeting.

It was further noted that the existing shed on the Nelson/Potter property also violates the front setback and that it may violated the side setback as well. The Chairman stated that he had a real problem with the proximity of the Nelson/Potter shed to the National Grid power lines. Mr. Kreiger stated that while they were at the site, he noticed an unrelated safety violation on the Nelson/Potter property which he is pursuing.

Maureen Gorman, 21 Langmore Lane, said that she is in favor of the variance as it would mean that Mr. Alund could store his things inside. Robert Mainello, 8 Woodcut Lane, said that the somewhat lesser variance now being discussed by the Board was fine with him.

Member Schmidt made a motion to go into private session to ask some legal questions of the Town Attorney. Member Trzcinski seconded. The motion carried 5 - 0. No action was

taken at the private session. Member Trzcinski made a motion to return to regular session. Member Steinbach seconded. The motion carried 5 - 0.

It was the consensus of the Board that the public hearing should be closed at this point. Essentially, the same comments are being made at each meeting. Nothing concrete has been submitted by Mr. Alund pertaining to his claims that it would be prohibitively expensive for him to locate the shed anywhere else on his property due to the grades. The Board indicated that it would ask Mr. Kreiger and Member Cipperly to verbally state their observations at the site visit. The public hearing would then be closed and Mr. Alund would be given two weeks to submit anything additional.

Mr. Kreiger and Member Cipperly recounted their observations at the site visit. It was generally noted that due to the grade of the property, the proximity of the power lines, the location of the septic field, and the size of the lot, the possible locations for a shed were very limited and those that there were would all require variances.

There being no additional comments from the public, the applicant or the Board, Member Steinbach made a motion to close the public hearing. Member Schmidt seconded. The motion carried 5 - 0. The Board will issue a written decision.

The Board then turned to further consideration of the appeal and petition of LAWRENCE MURRAY, owner-applicant, dated April 21, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a 14' x 16' Dutch Style Barn on a lot located at 69 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the side yard setback in an A-40 District in that 25 feet is required and 3 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 5 feet is proposed.

Lawrence Murray appeared. He said he really had nothing more to add. Mr. Kreiger stated that he met Mr. Murray at the site. He noted that the existing shed is right on the property line. At least this request would result in there being some setbacks from the property lines. The old shed would be removed. Mr. Kreiger went on to state that there is four foot bank coming off the swimming pool and it would probably not be prudent to mess with the earthen berm trying to excavate to put a shed in.

Member Schmidt stated that the problem is that the lots are too small to live within the setbacks imposed by the Zoning Ordinance. Although the lots are zoned A-40, they are typically smaller than the minimum lot size for that District. Attorney Cioffi read into the record a letter from Maureen and Kevin Cox, 2 Longhill Road, dated May 30, 2020, stating that they had no objection to the proposed variances. Maureen Gorman stated that she is in favor of this. Member Schmidt noted that there are no power line issues here. The Chairman made a motion to classify this matter a Type 2 action under SEQRA. Member Steinbach seconded. The motion carried 5 - 0.

The Board then reviewed the criteria for granting area variances. As to whether the variances would have a negative effect on the character of the neighborhood, the Board noted that there are numerous sheds in the neighborhood which do not comply with the Zoning

Ordinance. The Board noted that the typical lot sizes in the neighborhood were too small to accommodate the setbacks in an A-40 District.

As to whether there is any way for the applicant to meet his objective without obtaining a variance, the Board noted that there were no feasible alternatives which would not require a variance if the applicant was to have a shed. The shed location being proposed is actually more zoning compliant than the existing shed. Moving the proposed location would simply require different variances. The Board also noted that the size, location and the grading around the swimming pool greatly limited feasible locations for the shed.

As to whether the variances are substantial, the Board acknowledged that they are from a strictly numerical standpoint. However, the Board noted that due to the conditions on the lot, going with lesser variances might cause problems with the swimming pool. Also, permitting a shed with these setbacks will result in the removal of an existing shed which is even more non-compliant. Given the conditions on the lot, the Board found the variances not to be substantial.

Finally, the Board found the need for the variances not to be self-created. Rather, the Board noted that it is the topography and the lot size which are causing the difficulties.

Based on the foregoing analysis, Member Cipperly offered a Resolution granting the variances as requested. Member Trzcinski seconded. The Resolution was put to a roll call vote with all members voting in the affirmative.

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

Dated: Brunswick, N.Y.
September 15, 2010

Respectfully submitted,

THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary