

## Town of South Bristol Zoning Board of Appeals Meeting Minutes Wednesday, October 24, 2018

**Present:** Robert Bacon  
Thomas Burgie  
Albert Crofton  
Carol Dulski  
Jonathan Gage  
John Holtz

**Excused:** Barbara Howard

**Guests:** Gary & Carol Schmitz  
Phil Sommer

### Call to Order

The meeting of the Town of South Bristol Zoning Board of Appeals was called to order at 7:00 p.m. followed by the Pledge of Allegiance. There was a roll call of board members with all present except for Barbara Howard.

### Minutes

Chairman Burgie called for a motion to approve the September 26, 2018 meeting minutes. Robert Bacon made a motion to approve the meeting minutes which was seconded by Jonathan Gage. The motion was unanimously accepted by all board members present.

Chairman Burgie called for a motion to approve the amended June 27, 2018 meeting minutes with the minutes section added. Albert Crofton made a motion to approve the amended meeting minutes which was seconded by Robert Bacon. The motion was unanimously accepted by all board members present.

The Rules of Order was read by Robert Bacon.

### New Business

#### Special Use Permit Application #2018-0010

Chairman Burgie: I went down and visited today and we did some measurements and found that there is an error on the site survey that we are going to have to address as far as the actual variance request is going to be. We will clarify that for everybody when we get there in just a few minutes. I have had meetings with a couple people on that and think we are on the same page to be able keep it clear in everybody's mind and consistent with the information that we have.

[Diane Graham read the legal public hearing notice.]

**LEGAL NOTICE  
NOTICE OF PUBLIC HEARING**

**PLEASE TAKE NOTICE** that the Town of South Bristol Zoning Board of Appeals will hold a public hearing on the following application:

Application #2018-0010 for property owned by Bertino Living Trust located at 7040 State Route 21, Tax Map #195.05-1-1.200 is looking for a variance of 36.5 feet for a front setback of 13.5 feet where 50 feet is required to place a 12 by 24 storage shed.

**SAID HEARING** will take place on the 24th day of October, 2018 beginning at 7:00 p.m. at the South Bristol Town Hall, 6500 Gannett Hill Road West, South Bristol, NY.

All interested parties may appear in person or by representative.

Chairman Burgie: Since we have just read the applicant's newspaper notice in this may be the appropriate time before you present the case of what you are trying to do to amend the variance being requested and the reason for it. If you look on the site survey, it indicates actually twenty-five feet from the centerline. State Route 21 is normally a four rod road or 33 feet from the centerline for the right-of-way, which means it goes eight feet farther out than what is shown on this site survey. Phil please correct me now if I am saying anything wrong. Since it goes to 33 feet the 13.5 foot setback from the 25 foot line on the map has to be reduced by eight feet to the 33 feet so instead of 13.5 foot setback it would be a five and half foot setback requiring then a 43.5 foot variance to the 50 foot requirement. We tried to clarify that. There was an email that did not give a whole lot of information other than. Go ahead.

Phil Sommer: It would be a 44.5 foot variance.

Chairman Burgie: What did I say?

Phil Sommer: Forty-three.

Chairman Burgie: Forty-four and a half foot variance. Five and a half and 44.5 would be 50. Yes. Thank you. Trying to clarify that kind of muddied the water. Then different surveys showing different distances for State Route 21. We are going to have to assume because we did not get a definitive clarification. We do not have access to those old surveys. That it is going to be a 33 foot right-of-way from the centerline and therefore, we are going to need a five and half foot setback from there requiring a 44.5 foot variance. Is that clear what I said yes/no?

[Board members acknowledged yes.]

Chairman Burgie: The actual location of the shed as shown 38 feet from the centerline. It shows 38 feet from the centerline not 38.5. Thirty-eight feet would be five foot. I guess we need to assume that a five foot setback with a 45 foot variance based upon the 38 foot from the centerline measurement that it is indicated on the survey.

Phil Sommer: Correct.

Chairman Burgie: We will be working toward five foot setback with a 45 foot variance in our discussions here. This is where the applicant gets to present your case with what it is you are trying to do and the reason for that.

Gary Schmitz: My name is Gary Schmitz and my wife Carol. We are friends and neighbors in Woodville of the Bertinos who legally reside in the United Kingdom/England. They are just not able to be here. What Matt and Karen are proposing is to tear down the seven by eleven old shed that is there and put up a 12 by 24 foot two-story barn type structure to replace this. It is probably twice the area of what the old one is. Twelve by twenty-four is close to doubling the size. They need this strictly for storage. It will not be for cars or anything other than their personal effects they have in storage and probably have been almost since Karen's mother died in 2005. It is a lot of boat equipment. They are great on the water. They come here for nine weeks during the summer. That is about all the time they have to spend here with a child in school. There is a lot of boating equipment, swimming, water skiing, the whole thing. I can just about personally say that there is not going to be too much room left in that shed when they get items up in storage on Gulick Road in that area someplace down here. Karen is also into her mother's weaving. She has a big loom that she would like to put on the second tier and have quiet space if there is any time left for it. That will strictly be the use.

Chairman Burgie: I am sorry. I was thinking about something else. What did you say about the second floor?

Gary Schmitz: The second floor is where she hopes to at least set up her loom weaving machine. It is a big machine. She goes from the sheep right down to dyeing it and cleaning it herself. It is quite an operation.

Carol Schmitz: She has spinning wheels, three looms and that is where she would like to bring that. Right now they have been in storage since her mother died in 2008 or 2009. The cottage has no room whatsoever to bring those there. She also has some of her mother's antiques up in storage that she would like to bring down. It is primarily why they are looking at this larger shed.

Chairman Burgie: I want to make sure that it is clear that this is not occupancy. Not any second room to sleep in or anything of that nature.

Carol and Gary Schmitz: No.

Carol Schmitz: It is strictly to bring those items that have been up in storage. They actually have three storage areas. They put their cars up there plus some of her mother's antiques. She has barrels of wool that she would want to bring down. She takes the wool across the street and sits with the spinning wheel almost every day while the little one is in the water. It has been a hobby with her and her mother before her mother died. Again primarily what she wants to do is to bring things here.

Chairman Burgie: I already addressed this, but I want to make sure it was clear and I did not leave anything out. This is where the CEO explains the rationale for the refusal of the permit. Is there any other discussion?

Phil Sommer: Just setback is all.

Chairman Burgie: It does not meet the setback requirements based upon what our understanding is. We are looking at a five foot setback, forty-five foot variance.

Robert Bacon: It is only one setback, correct Phil?

Phil Sommer: Yes. Just to clarify I met with the Bertino's onsite and one point they were thinking about putting it across the road on the lake side, which would have been two variances. It would not have made any sense safety wise running across back and forth with a child.

Robert Bacon: Thank you.

Chairman Ely: Visitation reports?

Jonathan Gage: I was there today and stopped. I did not get out and walk around. It is right by the road. In Woodville it is always a different situation. The vast majority of the places in Woodville are right along the road there. You do wonder a lot when you are doing it. What is the solution to it when you look at it like this? Looking at this one purely from a point of view of this picture here. Seeing where the markers were. I take that the stakes in front were the markers of how far it going, correct?

Gary Schmitz: Yes.

Chairman Burgie: That is one of the things we discussed today and this is one of the issues we need to make sure is clear. That it is 33 feet from the centerline of the road. The marker that is there. We measured it today and it is 33 feet. So that is the edge of the right of way. If he were to put it all the way out to there, then it would be a zero setback. That is not what is shown on the survey map here.

Jonathan Gage: So it is going further back then?

Chairman Burgie: He is showing it here, as going basically the same as that front corner of the existing shed and backward. There is not a lot of room. They may have to dig further into that cliff to build the retaining wall and leave room for twelve feet from that point back.

Jonathan Gage: Okay. That was my first question.

Chairman Burgie: If we are going to talk about a five foot setback 45 foot variance that is what has to happen to be consistent with what is on here.

Jonathan Gage: I see in some of the correspondence here about a driveway on which I was not pertinent to the setback, but I see in the pictures that cars were parked there quite a bit.

Gary Schmitz: Matt and Karen have three cars. They shipped the Volkswagen years ago from England. That is their antique. They have three cars that are in storage right now. Most of the parking if they have guests, it might leave room for one more two at the most.

Jonathan Gage: I guess from what Tom says here it is not a problem then because I was basing it on the shed being moved out. At that point the cars would not be able to park there and I wondered what the alternative was. If the shed is going back there, I suppose it does not make any difference from the current situation.

Chairman Burgie: It brings up a great question because in Matt's email dated the 19<sup>th</sup> of October to Mr. Olvany. It says here "*The site of the shed is where the existing one is today and I included a few photos. The rope is where the new shed will be.*"

The rope does roughly line up with where that stake is that is 33 feet from the centerline. The picture here with the rope around it. That rope would indicate that he is coming all the way out to the 33 feet which is zero setback. That is not consistent with what is on his survey.

Gary Schmitz: Right.

Chairman Burgie: If we move forward today, we will be basing it on the survey as accurate.

Gary Schmitz: Right.

Chairman Burgie: If that is not accurate and he needs to do with what is in the rope, he will have to come back to the Zoning Board of Appeals and request a change to that variance with a new variance.

Gary Schmitz: Understood. I was not there when he set the rope up, but it is like my two stakes that you saw they were lower to show where we thought it would start.

Chairman Burgie: But it cannot start there.

Gary Schmitz: No. That is what I am saying. That is same way with these ropes here. He was more or less judging the size of what he would be looking at and what he could fit in there. So his ropes are out of the question just like my two stakes were out of the question.

Chairman Burgie: Right. We are going to assume that the survey map for his location and his distance from the centerline are going to be accurate.

Gary Schmitz: Right.

Chairman Burgie: In our discussion today.

Gary Schmitz: Yes.

Jonathan Gage: That is all I had.

Chairman Burgie: That was very confusing. I spent some time down there trying to sort that out too because it is just not consistent here at all. To see his email say it is roughly where the ropes are. Okay, that really muddies the water. Anyone else?

Carol Dulski: I did a drive by on Sunday. It was pretty much what Jonathan had said. What are you going to do down there?

Robert Bacon: I am familiar with the property. I have met both Matt and Karen at Lynn Lou's in the summertime when they show their VW off. As Carol has just said, I drive by frequently and you can see the shed. It is what it is.

John Holtz: Repeating what everybody has said. I did a drive by and did not get out because you can see it all the time. It is very familiar for anybody who drives down that road.

Chairman Burgie: Next we need to determine the SEQR status. The SEQR stands for State Environmental Quality Review Act. We are required to determine the status and any potential impact on the quality and the environment for environmental impacts on every decision we make here. There are three different types of statuses. One is a Type I. It is well defined. It is usually major projects. If it falls into one of those, then we need to do more review. Collect more information to see what impact that would be. Type II there is a specific list of Type II, which is lesser impact and have already been reviewed by the state. They are approved without further review if it falls into one of the Type II actions. Unlisted it is not in either one of those lists. If it is unlisted, we need to see if there is any major impact and see if we need to do more. In this case I believe that this would fall under a Type II action, which is *construction expansion or replacement of minor accessory/pertinent residential structures including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density*. This is a Type II action unless anybody has any thoughts on that. When we make our findings that will be our first finding. No further review is required.

Two different things did pop up in the SEQR information that was filled out. One is archeological site impact and the second is eagle nesting. We have information on both of those that will be addressed outside of actually doing the SEQR review. We will read those when we get information other public officials.

Any questions on the SEQR status?

Robert Bacon: I agree with you.

Chairman Burgie: Here is where we open up the public hearing and allow anyone here in the meeting room to address the issue and any other documentation from neighbors that may be impacting. Any live audience who would like to say anything in the public hearing. Diane can you read the letter please?

[Public hearing opened at 7:24 pm.]

[Diane Graham read the letter.]

*October 12, 2018*

*Gary and Carol Schmitz  
7045 State Route 21  
Naples, NY 14512*

*Planning Board  
Town of South Bristol  
Gannett Hill Road West  
Naples, NY 14512*

*Planning Board Members:*

*We would like to express our approval of the installation of a shed that has been requested by Matt and Karen Bertino, 7040 State Route 21, Naples, NY 14512 application #2018-000, tax map #195.05-1-1.200.*

*We do not have any objection to its location or its appearance.*

*Gary and Carol Schmitz*

Chairman Burgie: That is the only one we have received?

Diane Graham: Yes.

Chairman Burgie: Anything else from the public? Then we will close the public hearing.

[Public hearing closed at 7:25 pm.]

Chairman Burgie: Here we will relay any public or municipal officer's documentation as appropriate to this case. We received a number of different things. We will start out with Ontario County Planning Board documentation. We send just about everything up there to see if they have a recommendation of approval or disapproval. Many things that they feel can be handled at the local level and do not need their actual recommendation. They have a number of findings basically discussing what their different priorities are. We do not need to read every one of those into it. The final recommendation for them is: *The County Planning Board will make no formal recommendation to deny or approve applications involving one single family residential site including home occupations.* This is part of a single family residential site. So they are not going to make any formal recommendation. They do have a number of comments that we need to address.

1. *The Town is encouraged to grant only the minimum variance necessary to allow reasonable use of the lot.*

The state also tells us we have to grant only the minimum variance necessary, if we grant any.

2. *The applicant and referring agency are strongly encouraged to involve Canandaigua Lake Watershed Manager as early in the review process as possible to ensure proper design and implementation of storm water and erosion control measures.*
3. *The referring body should confirm that the proposed drainage from the expanded gravel driveway doesn't impact the integrity of the timber retaining wall.*

That has been addressed in Mr. Bertino's email I believe.

4. *Given the proximity to the lot to the gully and lake the referring body should ensure use of appropriate measures to control erosion and sediment.*

There main concern here is water runoff and erosion in everything they are doing here.

These are emails to Kevin Olvany addressing a number of these different issues. The retaining wall on the south side facing the gully and the application to DOT driveway work. We are waiting on the decision, additional drainage flow, which is going to be part of the driveway work. It does address impact to the surrounding area. From Mr. Olvany on October 24<sup>th</sup> at 16:04, which is 4:04 pm.

*“I apologize for the delayed response. Do you have an engineered design for the wall? This wall as I understand is for the wall on the south side that is being eroded down into that little gully. Do you have a site plan for the shed? Do you have a letter from Greg Trost indicating what you have stated in your email?”*

A number of different things that he had clarified as to what work was going on here.

*“This will be helpful with the Town. Typically, we do not like to see an expansion of a non-conforming structure in close proximity to roads, gullies, and the lake. Where will the additional drainage flow? To the gully to the south? What will be used to control flow during the installation of the shed?”*

He has a number of questions that obviously has not been addressed.

Gary Schmitz: Does it show a reply to that?

Diane Graham: The first page.

Robert Bacon: The initial part is a reply.

Chairman Burgie: Yes. That was October 24 at 11:35 am. I am not sure how that could be.

Gary Schmitz: It could be England time.

Chairman Burgie: Oh BST. Okay. He addresses some of that.

*“The current retaining wall on the south side facing the gully is damaged and our driveway is slowly subsiding into the gully. The retaining wall will be replaced or repaired as part of the driveway work. It should be done whether we are replacing the shed or not. Do you agree that ending this subsidence into the gully and, therefore, the lake would be a good thing? Greg Trost provided us with an application to the DOT for driveway work. We are awaiting the decision from the variance request before we submit the permit application to Greg. Greg, can you please add anything that might help the Town?”*

There is no response from Greg on that.

*“Flow during installation of the shed is prebuilt offsite and arrives on a flatbed and is installed in less than an hour. Installation consists of leveling the building and popping up the roof. It is hinged. Would you expect any additional runoff during such a short installation? Additional drainage flow is separate to the shed variance application, but in good faith we informed the Town of our plans for the driveway as well and had the surveyor place it on the survey. It is my current understanding that the driveway improvements only requires a permit from Greg Trost’s office not the Town because most of our driveway is in the state right-of-way. Am I correct? I will provide a copy of the driveway plans once we receive them from the driveway contractor and appreciate your opinion. Greg requires the driveway contractor’s plan for the application. Driveway work will be applied for regardless of the shed variance. Currently*

*during a heavy rain such that Woodville experiences every spring our crawl space is full up with anything under there is floating. Runoff from the road and hill causes this. Like any road the runoff is channeled away from the road since our house is as close to the road as physically possible. A lot of it ends up under our house. Our house was built in 1876 and has no foundation. It is on piers."*

The rest of his discussion here is about the degradation of the piers and how he needs to fix the flooding of the crawl space so that he cannot have any further damage to the piers.

*"You agree that the shed variance and driveway work are separate, therefore, have I answered your question?"*

The question from the Planning Board for Ontario County does address the fact that the proposed drainage affects a number of things in there. One of things we need to look at per our code is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district. The answer to his question is yes they are tied together. It has to be addressed. The other documentation we have has to do with the NYS Recreation and Historic Preservation for archeological site determination and the NYS DEC Division of Environmental Permits.

*On the eagle question "Spoke with Jenny Landry DEC Avon Office regarding some information on eagle nest locations. Information it was stated to her would be used by the Planning/Zoning Board to help with the SEQR review. Jenny stated that they do not give maps out because they really don't want the public to know locations for protections reasons. Jenny stated that the DEC is accurate in noting eagle locations in the area. When this shows the applicant should contact the DEC Division of Environmental permits to discuss their project. At that point they will tell applicant if a permit is needed or not. There is a 660 foot buffer radius around the eagle's nest and this office will help determine that. Applicants should also contact the Federal Fish and Wildlife. Jenny stated because they have jurisdiction in that area also."*

We do not have any indication that the Federal, Fish and Wildlife have been contacted.

Gary Schmitz: It should be there.

Chairman Burgie: Alright so the response from DEC.

*"It appears that the address 7040 State Route 21 you gave me over the phone for your proposed shed replacement is located within an area mapped as eagle wintering habitat as well as being close enough to eagle's nest to require a review of the proposed replacement of the existing shed with a new prebuilt and delivered shed and a placement of new base of crushed stone would not be expected to cause an issue for the eagles. The address is well outside the 660 foot buffer on both nest and the wintering area restrictions would only apply to removal of large trees."*

So the DEC has responded *"I concur with Mike's opinion."* This is Tom Wittig from US Fish and Wildlife Service. *"The proposed project is unlikely to disturb bald eagles in a manner prohibited by the bald and golden eagle protection act. Therefore, I do not recommend that you apply for a Federal eagle incidental take permit at this time. In the event project plans or eagle activity changed in any manner or there is a new concern of eagle take, please contact the service for further consultation. Thank you for coordinating with the office. Tom Wittig"*

That has been addressed the eagle question. The other one was the Parks, Recreation and Historic Preservation.

*“Dear Mrs. Bertino, Thank you for requesting the comments of the office of Parks and Recreation and Historic Preservation. We have reviewed the project in accordance with NYS Historic Preservation Act of 1980 Section 14.09 of the New York Parks, Recreation and Preservation Law. These comments are those of the OPRHP and relate only to historic cultural resources. They do not include potential environmental impacts in NYS park land that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the State Environmental Quality Review Act. Based upon this review it is the New York Office of Parks, Recreation and Historic Preservation’s opinion that your project will have no impact on archeological and/or historic resources listed in or eligible for the New York National Registrar for historic places. If further correspondence is required for this project, please be sure to refer to the OPRHP project review number noted above.”*

So two of the three requirements that they had in here have been met. The only one still questions with Kevin Olvany about the runoff and flow as part of the design of the driveway that has not been done yet.

Gary Schmitz: In other words if this is approved, Matt can go ahead with having the contractor come in and formulate his plans, am I correct?

Chairman Burgie: We will have a discussion period where we can bring this up more, but anybody is free to correct or add to it, if you would like. If the variance is approved, it will be with the condition that any restrictions or requirements placed upon the driveway reshaping, stone and the retaining wall, etc. by Kevin Olvany are met. It will be under that condition. That will also be monitored by the South Bristol Planning Board when the site plan is taken to them. They will have to be concerned with that also. Does that sound fair?

[Robert Bacon and Jonathan Gage concurred with Chairman Burgie.]

Chairman Burgie: It will not stop us tonight, but it will be with that condition.

Gary Schmitz: Right. He will need to have to get a permit to go ahead. In other words, he has to go to the contractor who is doing the wall and that get their plans take them to Kevin Olvany and have him okay them through a letter to you and then things can flow from there. What I mean flow from there is the contractor would be able to start work?

Chairman Burgie: With approval of the site plan by the Planning Board.

Gary Schmitz: Right.

Chairman Burgie: And the permit from the NYS DOT for work in their right of way.

Gary Schmitz: Okay.

Chairman Burgie: Yes. We could probably let the Planning Board review of that accomplishment be sufficient to meet our condition. Not have it come back to the Zoning Board of Appeals for that. Okay?

Gary Schmitz: The Planning Board that we meet with in December. They won't need that to say go ahead?

Chairman Burgie: They won't need what?

Gary Schmitz: The plans from the contractor that is going to do the work.

Chairman Burgie: Yes. They will need that. For them to go ahead. They do an initial review of the site plan and give comment to you and have you go work those and come back to them before they give final review. We try and do it in one meeting whenever possible, but the Planning Board will very often will do it over a couple of meetings before they are satisfied that all requirements have been met.

Gary Schmitz: What he was planning on with Guy Rogers who is doing the work was to do it during the winter. Draw it up you know. Go down there and shoot the lines. Whatever it is. So he is going to have to just step up the pace is what I am getting at. I will have to tell him he will have to step up the pace if he wants to get it back to the Planning Board or to Kevin first then the Planning Board for the meeting on December 5. I can give him your information.

Chairman Burgie: Okay. Is there any other public officer's documentation that I did not address here? I think I got it all.

Diane Graham: You mentioned them, but not necessarily read them all. The response from the surveyor regarding the survey and how he came to that.

Chairman Burgie: It was more confusing than it really answers the question so we are going to go with a more conservative reading and base it on our variance from that.

Okay then I open it up for ZBA member discussion and debate. Anyone have questions or discussion that you would like to address?

Robert Bacon: I guess the question on the table when we talked about this survey. The conservative approach is that we are saying the front of the new shed is in alignment with the old shed?

Chairman Burgie: Yes.

Robert Bacon: We are talking per the survey.

Chairman Burgie: The only thing that is inaccurate on the survey is where the right of way line is.

Robert Bacon: Okay.

Chairman Burgie: Everything else we are going to assume that it is accurate and go with that.

Robert Bacon: The reason that it is inaccurate is because the road has been widened or there has been change over the years?

Chairman Burgie: It is on the survey map as a 25 plus or minus feet from the centerline. This is a response from Jeremy Years Boundary to Phil Sommer today.

*“The highway right of way line shown on my survey map is based upon previous filed survey maps. Ontario County filed map #13030 and #5142 dating back to the early 1970’s. There are also several filed maps along the east side of the road map #12637 and #15572 that confirm that the highway right of way is less than four rods wide along portions of the NYS Route 21 in this vicinity. I hope this information is helpful. Jeremy”*

Chairman Burgie: We do not have access to these. If we were to assume that it is a 25 foot as on his survey map and further discussion we find that it is 33 feet, then we really put the petitioner in a bind because we will base our variance on something that would not allow him to build the way we do it.

Robert Bacon: So the bottom line answer to the question is the right of way distance is what is in the discussion?

Chairman Burgie: Yes.

Robert Bacon: It is either 25 or it is 33 feet. That is the part I want to clarify.

Chairman Burgie: If we look at the worst case scenario, where it is 33 feet and we base our variance based upon that and we grant a variance for 45 feet, then even if it was 25 foot instead of 33 foot from the centerline, our variance would allow them to build where they want to build.

Robert Bacon: So it is worst case scenario?

Chairman Burgie: Yes.

Robert Bacon: Okay.

Chairman Burgie: It is either that or table the discussion until we can sort this out and have them come back to another meeting.

Robert Bacon: I am fine.

Chairman Burgie: Anything else?

Jonathan Gage: This is a hypothetical with Phil being here. It would be a good one to talk about this. Since it is going in where the old one was now. I am not advocating this, but I am saying if they were to build onto the existing shed on the backside, this would not be a problem anyway, would it? I am not advocating it. I am saying as a hypothetical Phil.

Phil Sommer: It would be throwing away good money on bad.

Jonathan Gage: I am not saying to do that. I am just saying if someone wanted to do that.

Phil Sommer: You are limited as to how far you can go back because of the cliff.

Jonathan Gage: There is no problem with that. All we are talking here because we are putting it on the same spot as the current one is whether we want to grandfather in where it was before and allow a new one to replace the current one there by putting it in on the same spot or whether we want to not allow it because the variance is so much. It is a problem we always run into in Woodville.

Chairman Burgie: That is a really good question. The existing one is 11 by 7, which is 77 square feet and did not require a building permit. If it was just being replaced today, than it would not require a building permit, but a 12 by 24 does require a building permit and, therefore, a variance in this case. We cannot really use the grandfather or pre-existing non-conformance as a rationale. From a logic standpoint I see what you are saying. Would it be any worse than building onto the existing one? Kind of the same thing only putting up new wood. I see what you are saying.

Jonathan Gage: Just putting out food for thought to everyone.

Robert Bacon: Good thought. If we can use anything of the old shed that is worth saving.

Chairman Burgie: Just from a commonsense standpoint thoughí

Robert Bacon: You are expanding the square footage.

Chairman Burgie: You are expanding it away from the road and not increasing the non-conformity in any way. No other discussion? No questions? It is time to determine our findings. This is the evidence as we lay out the evidence that helps to support the decision that will ultimately be made.

Finding #1:

A motion was made that this is a type II action under paragraph 617.5(c)(10) *“construction, expansion of or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density.”* and therefore, requires no further study.

The motion for finding #1 was made by Thomas Burgie and it was seconded by Carol Dulski.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, C. Dulski, J. Gage

Motion carried.

Chairman Burgie: In the memo to the applicant for the area variance there were five different items that are specified that we need to consider five factors.

Finding #2:

Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance.

This location for the shed is actually farther away from the right of way than the two homes on both sides of it. The existing home and the neighbor's home. Much farther away. It looked like ten feet back from where those two are.

A motion was made that an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance.

The motion for finding #2 was made by Thomas Burgie and it was seconded by Jonathan Gage.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, C. Dulski, J. Gage

Motion carried.

Finding #3:

Robert Bacon: Can we add to that Tom by saying that the option was looked at to put the shed across the street and the current location is the best location from a safety aspect and from a blocking view of the lake aspect?

Chairman Burgie: That is factor number two that we need to look at. Can we address that in factor number 2?

Robert Bacon: You can look at it as a benefit to the applicant.

Chairman Burgie: Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than the area variance. That is going to be an alternative.

Robert Bacon: Okay. We will say that is number two.

Chairman Burgie: Do you want to reword that? It will be finding number three. It is number two factor.

A motion was made that the proposed location for the new shed is the best option of all options considered from the safety aspect and the lake view aspect.

The motion for finding #3 was made by Robert Bacon and it was seconded by Thomas Burgie.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, C. Dulski, J. Gage

Motion carried.

Finding #4:

Whether the requested area variance is substantial.

A motion was made that the requested area variance is definitely substantial. It is 45 foot area variance where 50 is required. That is ninety percent of it.

The motion for finding #4 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, C. Dulski, J. Gage

Motion carried.

Finding #5:

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Here is where we get into the issue that Kevin Olvany has raised and the condition would be that you must meet any requirements that he specifies in the review of the design to ensure that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

So we will specify the condition in a moment. That is the next thing we are going to do.

A motion was made that the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district as long as any conditions that Kevin Olvany specifies in the design are met.

The motion for finding #5 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, C. Dulski, J. Gage

Motion carried.

Finding #6:

Robert Bacon: In addition to area variance question number four should we mention that we have the DEC and archeological supporting letters?

Chairman Burgie: Yes. We can do that. It is captured in the minutes, but we can do that as part of the finding.

Robert Bacon: I make a motion that the three letters received from the archeological society, DEC and the Federal Fish and Wildlife state this application will not have an adverse impact.

Chairman Burgie: That is finding #6 that goes along with finding #5.

Robert Bacon: Correct.

The motion for finding #6 was made by Robert Bacon and it was seconded by Thomas Burgie.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, C. Dulski, J. Gage

Motion carried.

Finding #7:

Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

A motion was made that the alleged difficulty was not self-created.

The motion for finding #7 was made by Thomas Burgie and it was seconded by Albert Crofton.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, C. Dulski, J. Gage

Motion carried.

Chairman Burgie: That addresses all the minimum required findings that we need to make. Anybody have another finding that they feel we should put in? No.

Condition #1:

This area variance for a 45 foot variance will be conditional based upon meeting any requirements that Kevin Olvany from the Ontario County Soil and Water place upon the design of this driveway and the retaining wall, etc.

A motion was made that any conditions that Kevin Olvany or the Ontario County Soil and Water place upon the design of this driveway surface and the retaining wall are satisfied.

The motion for condition #1 was made by Thomas Burgie and it was seconded by Robert Bacon.

All in favor.

Aye: 5; Opposed: 0

R. Bacon; T. Burgie, A. Crofton, C. Dulski, J. Gage

Motion carried.

Chairman Burgie: Any other conditions?

Chairman Burgie: Then I would petition the Board to offer a motion to approve or deny the applicant's request.

A motion was made by Robert Bacon to approve the application for a 45 foot variance for the new shed with a front setback of five feet from the right-of-way based on 33 feet from the centerline of State Route 21.

Roll call vote:

Robert Bacon, Aye  
Thomas Burgie, Aye  
Albert Crofton, Aye  
Carol Dulski, Aye  
Jonathan Gage, Aye

Motion carried.

Carol Schmitz: They are waiting in England to hear from us and they are five and half hours ahead of us. We are going to wait until the morning. Thank you so much.

Gary Schmitz: Is there ever a clear answer on the right of way issue? I am curious what it would be.

Robert Bacon: You are curious from a neighborø aspect and you also have the same issue, correct?

Gary Schmitz: How do you find out which right of way you are operating in there?

Chairman Burgie: You would have to contact the State to ask them what you carry as the right of way on your State Route in that specific area.

Gary Schmitz: So it would be for the whole area?

Chairman Burgie: I would not expect that they are going to change the right of way for a one hundred feet versus the rest of the area, but if they have specific locations that they have changed the right of way then they would have to tell us that. We are going to assume that the whole area is the normal definition.

Gary Schmitz: I am just curious how they operate it.

Robert Bacon: I am going to assume that it is a Woodville exception.

Gary Schmitz: I know.

## **Other**

### Hawks Project Update

Chairman Burgie shared that at the Zoning Board of Appeals September 26<sup>th</sup> meeting we required two conditions on the Hawks Project. James Ely, Planning Board Chairman contacted Chairman Burgie whether he wanted Tom Hawks to come back to the Zoning Board of Appeals to show that the conditions have been met. Chairman Burgie responded that as long as they recorded in their Planning Board minutes the conditions have been met the Zoning Board of Appeals would be satisfied.

Zoning Board of Appeals members supported the Chairmanø decision.

Board member Thomas Burgie term renewal

Diane Graham shared that Thomas Burgie's term is up at the end of this year and will be asking the Town Board for reappointment to December 31, 2023.

Meeting for 2019

There was discussion about whether to keep the November and December meeting dates for 2019 the fourth Wednesday or make adjustments now for applicants to be able to plan for their projects accordingly.

The Board decided that there will be a combined November and December meeting in 2019 for the first or second week in December.

November Meeting Agenda

There was a discussion about applications for the November 28<sup>th</sup> meeting. There may be one application for lot coverage and side setback variances. Waiting on documentation before proceeding.

**Motion to Adjourn**

Being no further business, Thomas Burgie made a motion to adjourn the meeting and it was seconded by Robert Bacon. The motion was unanimously accepted and the meeting was adjourned at 8:18 p.m.

Respectfully submitted,



Diane Scholtz Graham  
Board Secretary