



Town of South Bristol
6500 West Gannett Hill Road
Naples, NY 14512-9216
585.374.6341

Zoning Board of Appeals Meeting Agenda

Wednesday, February 26, 2020
7:00 p.m.

Call to Order

Pledge of Allegiance

Minutes

Approval of January 22, 2020 Zoning Board of Appeals Meeting Minutes

Rules of Order

New Business

Area Variance Application #2020-0001

Owners: Melissa Scott and Scott Portuondo
Representative: Phil Greene, Worden Hill Marine
Property: 6377 Old Post Road
Tax Map #: 185.10-1-13.000
Zoned: LR (Lake Residential)

Old Business

Other

Motion to Adjourn

Town of South Bristol Zoning Board of Appeals Meeting Minutes Wednesday, February 26, 2020

Present: Robert Bacon
Thomas Burgie
Carol Dulski
Jonathan Gage
Barbara Howard

Absent: Albert Crofton
John Holtz

Guests: Phil Greene
David Samatulski
Phil Sommer

Call to Order

The meeting of the Town of South Bristol Zoning Board of Appeals was called to order at 7:05 p.m. followed by the Pledge of Allegiance. There was a roll call of board members with all present except for Albert Crofton and John Holtz.

Minutes

Chairman Burgie called for a motion to approve the January 22, 2020 meeting minutes. Barbara Howard made a motion to approve the meeting minutes, which was seconded by Carol Dulski. The motion was unanimously accepted by all board members present.

Rules of Order

Robert Bacon read the Rules of Order.

New Business

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Chairman Burgie: We have an area variance application that has two different laws that govern us in this case. One is the South Bristol Town Code and the other is the Docking and Mooring Law, which is a multi-community law agreed to by South Bristol and other communities around the lake. We have to be in accordance with both of those as we go through this.

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 #2020-0001 for property owned by Melissa Scott and Scott Portuondo located at 6377 Old Post Road, Tax Map #185.10-1-13.000. The applicant and property owners are looking for a 25 foot variance with a zero foot rear setback where 25 foot is required by Town Code to place an eight foot by fifteen foot boat accessory structure next to permanent dock.

Said hearing will take place on the 26th day of February, 2020 beginning at 7:00 p.m. at the South Bristol Town Hall, 6500 West Gannett Hill Road, Naples, NY 14512.

Application is available for review at the Planning and Zoning Office prior to the above meeting date.

All interested parties may provide written comments, appear in person or by representative.

Diane Scholtz Graham, Board Assistant

Chairman Burgie: This is your opportunity representing the owners to present their case.

Phil Greene: This is a little bit of unique situation in that as you described there are two separate laws that apply to this project. The best way for me to start is to open your packet to the last page for the survey map. I can probably answer questions and do a little pointing to explain what it is going on here. This fine little red line is the mean high water mark on your map. Are you following what I am saying? This little spit of land is what determines why we are asking for the variance. The Docking and Mooring Law stipulates what is called a steep slopes parcel and what is not. That little spit of land is just large enough from the Docking and Mooring Law that this parcel does not qualify as a steep slopes. We could conceivably build a shed on that small piece of land then conform to the Docking and Mooring Law, however, if we built the shed on that little spit of land we would have to be here anyway because we do not meet the rear yard setback. Another point with this project is to the south side of the dock on that little piece there is an existing pier that was built a long time ago. Previous owners and contractors decided that they wanted the new dock built beside that pier instead of extending from it. That really violates the spirit of the Docking and Mooring Law although technically it is ethical. You can see from the photo that pier was in pretty rough shape. Maybe that is why the previous owners decided not to repair it. As part of our project, we will be removing that pier surface. That is not really a major part of tonight's presentation, but trying to give you a scope of what is going to happen there. When we remove that pier surface we will then be able to add on to the section of the dock at the far end and create a more usable space. Reasons why we do not want to put the boat accessory structure on the land:

1. Elevation of that lawn area is only a few inches above the mean high lake level so that in flooding conditions that grass will be under water. We could certainly elevate the storage building above that, but it is not the best situation to put your structure in flood zones.
2. The other reason that does not really show in the photo and I neglected to put it in the verbiage is in the center of that spit of land there is a small intermittent stream that comes down the hill. That deposits debris as well as water onto to the lawn area. We do not want a building where the back side of it is going to be flooded and we are adding for debris to build up.

3. Compared to dragging your stuff up the hill it is not a long ways away, but the distance between the dock and boat is a few steps. So it is not convenient to store life jackets, skis and stuff if you have to carry them some distance.
4. That spit of land has a rip rap placed around the perimeter, which keeps the wave action from eating the shoreline away. That rip rap is not placed properly nor is it the right size of stone. The stones there are too small and the ice will move them. I am not sure when it was last reworked, but long term that will be a maintenance issue for sure.
5. We are trying to maintain an open shoreline. If you had a chance and looked on the County website. If not, I have it on my pad. This is the parcel that Melissa and Scott own. You can see to the south there is quite a bit of open territory and we are trying to minimize the clutter on the shoreline. By putting the shed on the dock structure we can maintain that open shoreline. Open shoreline is becoming a premium on the lake.

Those are the main reasons why we prefer not to put the storage building on the spit of land.

The advantages of putting it on the dock are:

1. More convenient
2. Much closer to where you would utilize the items
3. Again to maintain the open shoreline
4. The shed will be hidden behind the existing boat hoist
5. It puts all the like uses together

This is their property and just to the north is a rather extensive boat hoist structure and their storage shed. So by putting the new storage shed here we group all the like uses together.

Chairman Burgie: What is the black line here? Is that the mean high water line?

Phil Greene: The black line is the County's approximate property line. These lines were all done by Pictometry years ago so it does not accurately represent property lines or shorelines where this survey map does.

Chairman Burgie: Okay. Thank you.

Phil Greene: Yes. We purposely kept the size of the storage facility over the water to be in compliance with the Docking and Mooring Law. If that little shed were to be located on land, we could probably make it much larger, but we do not really need it. So we are not asking for more than what is normally allowed. I guess that is the best I am going to plead my case. I just want to emphasize that this whole parcel is a bit unique. I did outline the five reasons in my verbiage. I do not know if you want me to repeat those, unless you want me to?

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Chairman Burgie: No. We have those and can address them as we go through. Do you have anything else to add at this point?

Phil Greene: I do not think so. I am open to questions.

Chairman Burgie: We will get to questions in a moment. The next step is for the Code Enforcement Officer to explain the rationale for refusal of the permit.

Phil Sommer: According to Docking and Mooring Law it does not fit the steep slopes so that negates having a boat accessory structure, which is allowed under that particular section 73.10(D). That is why I denied it.

Chairman Burgie: Okay. So everyone has a copy of the map showing the steep slope. As I understand it where the yellow is shown along the shoreline there. It makes that not eligible for steep slope consideration.

Phil Sommer: What are you looking at?

Chairman Burgie: This map. Because of that spit of land this does not qualify or classify as a steep slope property?

Phil Sommer: Right. Takes them out of that as steep slope.

Chairman Burgie: We cannot apply steep slope criteria from the Docking and Mooring Law for that.

Phil Sommer: Right.

Chairman Burgie: Okay. Any visitation reports?

Jonathan Gage: I went down this morning and met Phil Greene to look at it. The site is such from an aesthetic viewpoint putting the shed where he is proposing. It looks the best because it is right next to the one neighbor and it is the exact same dimensions of it. If one is to look at that as stepping out there on the lake or edge of the pier and you are looking around, it would fit into the general layout of the area. The best of all the plans for it.

Chairman Burgie: I was not able to get down there either. I have been out of town.

Carol Dulski: I was down there and it was exactly what Jonathan had said. It would probably be the best location.

Chairman Burgie: Okay. The next step is to determine SEQR status and then we will get into more discussion and input here. The State Environmental Quality Review Act status in this case fits into a type II action, which is "*construction expansion 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.*" It would fit into that and it would also fit into granting of individual setback and lot line variances. So the two of those when we get to making findings, which is our documentary evidence of why we made whatever decision we

made. It will be 617.5(C)(10) & (12). No further action is required in this case because it is a type II action. Anyone have any discussion on that?

Robert Bacon: No.

Public hearing opened at 7:26 pm.

Chairman Burgie: This is where we open the public hearing and anyone who has anything to add that has not already have the opportunity to do that. Since you are alone I guess that is you. Here is where we get into a trick because the flow chart says to close. Are we really going to at this point? Let's hold closing it. Is there any other public or municipal officer documentation that is appropriate to this case that has been provided?

Diane Graham: The archeological site SHPO response. It reads that no further action is required at this time.

Chairman Burgie: I am going to hold the public hearing open. It is a little bit non-standard because of some of the discussion we are going to have right now. See what our options are. This is where we have Zoning Board of Appeals discussion and debate period. I would like to start out by referencing the Docking and Mooring Law. The Docking and Mooring Law is a multi-community law that no one municipality can vary what is in it unless it specifically granted to that municipality to do it. In other words since it is a multi-community agreement on how to control the access to the lake, the development around the lake, etc. no one community can change it unless it tells us we can. There is a paragraph in here under 73-11 Tier 1 permit requirement for permanent facilities. This is under 73-11(F) *"for a dock or associated facility or structure regulated under this article is or is proposed to be located on both sides of the mean high water mark. It shall be regulated exclusively under the provisions of this article."* That tells me that the Docking and Mooring Law takes all priority and the variance to Town Code requirements is not applicable here. It is the Docking and Mooring Law that is going to take priority because where you propose to build this straddles the mean high water line. We are a signature to this law and, therefore, this takes precedence. It says *"exclusively under the provisions of this article."* In looking at what we are allowed to vary. *"The Zoning Board of Appeals is limited to variances from the facility area lines and outlet setbacks in all tiers and dock configuration requirements in Tier 1. Setbacks from the facility area lines and/or dock configuration may be varied for the following purposes only: To provide safe navigational access or to minimize adverse environmental impacts on the Canandaigua Lake and its watershed."* Those are the only two situations that we, as the Board, are granted authority to vary the Docking and Mooring Law. The Docking and Mooring Law makes it very clear that this takes precedence over the local code. In requesting a variance to the local code the setback from the lake 25 foot required to go down to zero. The majority of this structure is over water and it straddles the mean high water line. We could vary the local code, but the local code is not applicable here. The South Bristol Town Code is not applicable. The Docking and Mooring Law is the only governing document in this case. As I read it, we do not have authority to vary any requirements for this placement that you are looking for. I am looking for discussion/dialogue. Does anybody read it differently? Do you disagree with what I am saying here?

Jonathan Gage: Unfortunately, it is pretty straight ahead.

Robert Bacon: I tend to agree with the words you used. It is stated in the zoning law. It is clear cut.

Barbara Howard: There is not much give in there. There is not like there is a lot of oversee to change the meeting to. It is pretty concise.

Chairman Burgie: Carol?

Carol Dulski: Exactly the mooring law.

Chairman Burgie: So based upon what I am reading here and the input from the Code Enforcement Officer we do not have the authority to grant you the variance you are looking for.

Phil Greene: The only issue that could possibly be raised is the environmental issue. I know environmental is a broad term and certainly apply to the aesthetics also.

Chairman Burgie: That is stretching it. To me that is stretching it.

Phil Greene: I know. Yes. This whole thing is a stretch.

Chairman Burgie: I know.

Phil Greene: If you want to use that in a very thin excuse to grant the variance, that is an option from my point of view. Not telling you how to do your job, of course, but that is certainly one of the options.

Chairman Burgie: I would not be prone to do that, personally. Maybe other Board members would be prone to look at that if anybody wants to discuss that aspect? You had mentioned that, aesthetically, would be the best place for it. Does that really give us the authority under minimizing adverse environmental impacts to Canandaigua Lake?

Jonathan Gage: Aesthetics and environmental impact they are not necessarily the same thing.

Phil Sommer: If the shed was to go on that little peninsula, I heard Phil say that there is a stream going through there, the rip rap is in rough shape, prone to flowing, would that be an instance you could use as environmental because you have the potential of building on that piece causing damage to the lake?

Chairman Burgie: That is a different issue. That would be a different variance that we are talking about. We would have to consider the impact.

Phil Sommer: I am just talking the key word environmental.

Chairman Burgie: I understand. If we are weighing one or the other, it is a yes or no to what you have requested. If it is a no, you have an option, then we have to weigh the environmental impact for that. I don't see as it is okay to keep from building over let's consider that an environmental impact so that we can do it here. You talked to Kevin Olvany, right?

Phil Sommer: Yes.

Chairman Burgie: He said, "*in his opinion there was no way that this was justified?*"

Phil Sommer: Boat accessory structure was not allowed because it did not meet the steep slope.

Chairman Burgie: Under the steep slope criteria. Okay. I am open to discussion from you guys. I do not know.

Is there a reason the rip rap wall there could not be fortified to make sure that it did not wash away?

Phil Greene: No. There is no reason it cannot be.

Chairman Burgie: Is there a reason that the stream coming down and going over that could not be diverted to one side or the other.

Phil Greene: That is correct. It could be.

Chairman Burgie: Okay. That is a feasible piece even though those are two issues that you would have to deal with, but that is a feasible piece to build the shed.

Phil Greene: If you deny this variance request, then, obviously, that is where we are headed. Those are the things we have to deal with and doing them.

Chairman Burgie: The wording of denying the variance request I guess is the next thing that we need to look at. In looking at the Town Code and the NYS Town Law if we deny this variance request, we by our Town Code are not allowed to look at a variance request similar in nature for one year. That is in the Town Code. There is only one option where we would be able to and that is in the NYS Town Law if we were to deny it. If one of the Board Members were to make a motion to readdress it and a unanimous decision by the Board Members present said we want to relook at this, we could do it shorter than one year and then we would have to schedule another meeting to address that variance you would be requesting. So if we do not go forward with a yes, I think this is going to work then we can hold. The reason that I did not close the public hearing was we can hold this for you to modify your request and come back next month to address a new site plan and a new request with specific variance dimensions.

Phil Greene: Okay.

Chairman Burgie: If we deny it, then we are really tying our hands.

Phil Greene: Okay. That is fair.

Jonathan Gage: Would you need to build a walkway from that spit of land over to the dock then?

Phil Greene: Most of the year there is solid enough shoreline that you could walk. Most of the year. I would not hornswoggle you and say no. Their sneakers may get wet occasionally. Nothing terrible.

Chairman Burgie: Other discussion?

Robert Bacon: Do we want to make a motion at this time?

Jonathan Gage: Ready for that yet Tom?

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Chairman Burgie: If the discussion is done, then I guess we are ready to make a motion. If there is any other discussion that you would like to have?

Robert Bacon: I do not have further discussion on the current configuration where the structure in straddling the mean high water line. That is fairly clear-cut.

Barbara Howard: I agree.

Jonathan Gage: Me too.

Chairman Burgie: Okay. I think that option is dead in the water.

Phil Greene: You are telling me that the option of putting a storage shed where we have proposed is not acceptable?

Chairman Burgie: That is correct. We do not have the authority as I read and the Board Members read the Docking and Mooring Law, we do not have the authority to grant it.

Phil Greene: I get it. I guess my request is being adjourned to next month and we will come back with a modified plan.

Chairman Burgie: It will have to be specific on exactly what the setback will be from the mean high water line so we can address that specific variance that you are looking for.

Robert Bacon: I do not think you want to put a time limit on it. I think you want to say we adjourned the meeting and wait for you to have the next alternative available. We do not want to limit it to next month.

Phil Greene: Right. That is fine. I appreciate that. These people want to have something done for Memorial Day.

Chairman Burgie: We can do that.

Robert Bacon: Their interest and desire will generate that timeline.

Chairman Burgie: I am sorry our hands are really tied as we read the code. This will be the best option. Do we have a motion to table the discussion?

A motion was made to table the current discussion and wait for an alternative to be presented.

Robert Bacon made the motion and Jonathan Gage seconded it.

All in favor.

Aye: 5, R. Bacon, T. Burgie, C. Dulski, J. Gage, B. Howard

Nay: 0

Motion carried.

Chairman Burgie: Until we have the new site plan determining findings and capturing the SEQR and all that we will have wait. One thing I want to point out we could probably if there are not significant differences in your SEQR input, we can use what you have. If there are differences, you will have to scan through and say okay is anything changed here.

Phil Greene: Alright. Thank you for your time.

Other

Public Hearings Continued

There was an update about the two continued public hearings:

Richard Smith, 6471 St Rt 21

Smith/Portuondo, 6377 Old Post Rd

Everwilde Inn and Spa Project

Completed Final Environmental Impact Statement (FEIS) binder has been provided to the Planning Board and Zoning Board of Appeals. If a board member wants to review it, a copy is in the Planning/Zoning Office. It is also available on the Town website.

Short-Term Rental Local Law

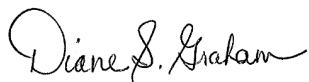
The Planning Board drafted a short-term rental local law that does not require a special use, therefore, the Zoning Board will not be in the lead on this.

Planning Board is working on a proposed events local law around the short-term rental local law.

Motion to Adjourn

Being no further business, Robert Bacon made a motion to adjourn the meeting and it was seconded by Carol Dulski. The motion was unanimously accepted and the meeting was adjourned at 8:02 p.m.

Respectfully submitted,



Diane Scholtz Graham
Board Assistant