



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

Zoning Board of Appeals Zoom Meeting Agenda

Join Zoom Meeting <https://zoom.us/j/133479092> Meeting ID: 133 479 092
Wednesday, April 22, 2020
7:00 p.m.

Call to Order

Pledge of Allegiance

Minutes

Approval of February 26, 2020 Zoning Board of Appeals Meeting Minutes

Rules of Order

Old Business

Area Variance Amended Application #2020-0001 Rescheduled

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)

New Business

Other

Motion to Adjourn

Town of South Bristol Zoning Board of Appeals Meeting Minutes Wednesday, April 22, 2020

Present: Robert Bacon
Thomas Burgie
Albert Crofton
Carol Dulski
Jonathan Gage
John Holtz (late entry)
Barbara Howard

Guests: Phil Greene
Kevin Dooley
Phil Sommer

Call to Order

The Zoom meeting of the Town of South Bristol Zoning Board of Appeals was called to order at 7:10 pm followed by the Pledge of Allegiance.

Chairman Burgie: This is a continuation meeting that we did not close. I do not remember what month it was, do you?

Diane Graham: It was February 26, 2020 and we had scheduled it for March 25, 2020 and it was rescheduled from then to today.

Chairman Burgie: Okay. Thank you. Would you like to take attendance please?

Diane Graham: Yes.

Robert Bacon – Present
Thomas Burgie – Present
Albert Crofton – Present
Carol Dulski – Present
Jonathan Gage – Present
John Holtz – Excused
Barbara Howard – Present

All accounted for except John Holtz.

Chairman Burgie: Thank you.

Diane Graham: John Holtz is in the waiting room. He is joining the meeting right now so I get him connected here. Maybe we will not be able to see him, but we will be able to hear him so I am going to try an unmute him somehow. He is connecting to audio as we speak. I do not see audio or video for him. So John Holtz might be having some technical difficulty, but he has tried.

Chairman Burgie: If you can connect him to the meeting, at some point, that would be great. Otherwise we do have a quorum so we can proceed.

Minutes

Chairman Burgie called for a motion to approve the February 26, 2020 meeting minutes. Jonathan Gage made a motion to approve the meeting minutes, which was seconded by Robert Bacon. The motion was unanimously accepted by all board members present.

Rules of Order

Chairman Burgie read the Rules of Order.

Old Business

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Legal Notice

Notice of Public Hearing

Please take notice that the Town of South Bristol Zoning Board of Appeals will hold a rescheduled public hearing on the following application:

Amended 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 21.6 foot variance with a 3.4 foot rear setback where 25 foot is required by Town Code to place an eight foot by fifteen foot storage shed on a flat piece of land.

Said hearing will take place on the 22nd day of April, 2020 by joining Zoom Meeting <https://zoom.us/j/133479092> Meeting ID: 133 479 092 beginning at 7:00 p.m.

All interested parties may join the Zoom meeting and/or provide written comments prior to the meeting.

Diane Scholtz Graham
Board Assistant

This was published on April 12th.

Chairman Burgie: Thank you.

Diane Graham: I have a question. There is one person in the waiting room, but it is a phone number. Should I take a chance in admitting them?

Chairman Burgie: Do you have any idea who it is?

Diane Graham: No.

Chairman Burgie: It is an open meeting so we have to allow anybody.

Diane Graham: Okay. Who do we have with the phone number, please? Hello?

Phone number: I am in.

Diane Graham: Who is this?

John Holtz: John Holtz.

Diane Graham: Okay. I am going to rename you. Thank you John. I did not know who it was.

John Holtz: I have been trying to get in. It is as hard as trying to find the house.

Diane Graham: John, you are on here twice. Did you use a different device?

John Holtz: I am on the phone for audio and I am on the computer for video.

Diane Graham: I had done roll call earlier and now we can say you are present at the meeting.

Chairman Burgie: Next opportunity is the applicant presents his case. You already presented the case in one way and we did not have the authority to do that so would you like to present what you would like to do now.

Diane Graham: Before Phelps presents can I put up on the screen his site plan?

Chairman Burgie: Sure.

Diane Graham: You will not be able to see each other, you will see the site plan. Bear with me. I will blow it up so you can see it closer. Do you want it any bigger? Is that better? So Phelps can start.

Phil Greene: Are you ready for me now?

Chairman Burgie: Yes. We are.

Phil Greene: Alright. My plan as you see showing on the screen. We are showing the shed located on the little spit of land, which is the spit that disqualified us from having the storage building as part of the dock in the previous proposal. Obviously, if you had a chance to visit the site, we are locating this as close as possible to the cliff bank taking into account there is a small intermittent type stream/drainage ditch that does come down onto that spit of land. So I moved the shed location as far away from the lake as possible. The various setback numbers are the maximum we can practically achieve at this point. I will run through the five factors quickly:

1. We do not see that there will be any detriment to the neighborhood or nearby properties because of what we are proposing to do. The neighbor to the north has facilities that are right on the property line at seven foot setback line and the neighbor to the south there nearest facility is almost a

hundred feet away. Now I did not go there and measure this. I just scaled that off of the County website. It may be more or less a hundred feet.

2. The second factor has to do with some other reasonable method without a variance. Obviously, with a steep slope and the requirement for 25 feet of setback we would have a real hard time justifying a shed that was half way to the house almost up several flights of stairs in order to not have that variance request at all. That is the main reason we want to put the shed down at lake level for it to be practically useful.
3. The third factor is whether our request is substantial. Obviously, the request is quite substantial. Like I said previously, we are doing the best we can given the physical layout of the property.
4. The fourth factor has to do with changing the overall impact and conditions of the neighborhood in the district from an environmental standpoint. Basically, the owners are proposing no increase of traffic, boat traffic or change of use with the addition of the storage shed. It is more a matter of practical convenience. We are not going to create any issues in the neighborhood that would impact the environment.
5. The last item, of course, is whether this is self-created. Certainly needing a storage facility is totally self-created, but given the physical restrictions of the parcel of land this we feel is a reasonable request.

As far as the letter of objection from the neighbors to the south. I feel that their letter is meant mostly as a philosophical objection. As I mentioned earlier, their nearest usable waterfront is a hundred feet away. Their usable waterfront also includes a man-made land area. I guess the best thing I can say in our defense the time to object to the construction of the spit of land was in the past by the previous owners. As you folks realize, we tried unsuccessfully with our previous request to put the shed further away from their property, but was not allowed. Frankly, I wish this little spit of land was not there because we would not be having this meeting. At that point that ends my brief presentation. I would be happy to answer questions.

Chairman Burgie: Any questions at this point? If not, let's hear from the Code Enforcement Officer. I know you had already addressed some of this in the record.

Diane Graham: Phil.

Phil Sommer: Yes.

Chairman Burgie: What is the rationale for refusing the permit? I know you have already addressed it, but we need to get it on the record.

Phil Sommer: The reason for rejecting it was it does not meet the setbacks.

Chairman Burgie: Thank you.

Diane Graham: Let me know when you want me to stop sharing the site plan on the screen.

Chairman Burgie: Does anybody need to see the site plan anymore?

Board Members: No.

Diane Graham: I can always bring it back, if need be.

Chairman Burgie: Thank you. We have already addressed the visitation reports from the last meeting. Anything to add from anybody who has had the opportunity to visit?

Robert Bacon: Nothing to add here Tom.

Jonathan Gage: No. Nothing to add Tom.

Carol Dulski: No.

Barbara Howard: No.

Albert Crofton: Nothing to add.

Chairman Burgie: Synopsis of the comments made from the visitation report was it would have been aesthetically better to put it over water had we had the legal authority to do that, but we did not have the legal authority. So this is the next best option, I believe. A fair statement?

Board Members: Yes.

Chairman Burgie: The next item we need to address is the SEQR. I would suggest this falls under SEQR regulation 617.5(c)(10), which is construction, expansion or placement of minor accessory appurtenant residential structures including and I am going to skip all of this down to storage sheds. It does not change land use or density that is 617.5(c)(10) and 617.5(c)(12), which is granting of individual setback and lot line variances. If there is any discussion on that, feel free, otherwise, we will capture that as our first finding when we get to findings. Good?

Board Members: Good.

Chairman Burgie: Here we open it for public hearing

The public hearing opened at 7:30 pm.

Diane Graham: I do not have anybody in the waiting room. Just checking to let you know.

Chairman Burgie: We do not have anybody else on with us now so I guess that does it for the public hearing. We can now close the public hearing.

The public hearing closed at 7:31 pm.

Diane Graham: Can we make a note to close both public hearings?

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Chairman Burgie: Yes. If you want to. That public hearing was kept open to close at this public hearing. I am not sure we need to, but we can.

Diane Graham: So the February public hearing was continued and this public hearing for April are both closed.

Chairman Burgie: You referenced a letter of objection. This is the time for any public or municipal officer's documentation and let's enter this letter into the record. I have not seen this letter of objection so I am not sure what it says.

Diane Graham: I have two of them.

Chairman Burgie: Please read both of them.

Diane Graham: Just to preface the first one I am going to read is on the initial meeting in February that I received after the meeting. The second one I am going to read is basically from the same family that is objecting to the amended application as well.

Received 3/2/2020
Town of South Bristol
Application #2020-0001

To Zoning Board:

I believe that the 25 foot barrier rule was put there in the first place to not only to protect the neighbors but keep Canandaigua Lake a lake that turns into a Lake like some our neighboring Finger Lakes where the structures are right on top of each other.

Thus, I am against this variance.

Sincerely,

Macy Harris
6379 Old Post Road

Received 3/23/2020
March 17, 2020

Town of South Bristol Planning and Zoning
South Bristol Town Hall

To Whom It May Concern:

We are writing in reference to the amended application #2020-0001 for property owned by Melissa Scott and Scott Portuondo located at 6377 Old Post Rd, Tax Map #185.10-1-13.000.

We live next door to this property and are concerned about this variance and the precedence it sets. Our additional concern stems from the fact that the flat piece of property, where we believe this "storage shed" is supposedly going, seems to be right on our property line. It is also on land that was never there 20 years ago. We watched the previous owners move rocks from another location to build the cribbing and then hand carry 250 50-lb bags of soil down the steps to extend their beach out into the water. I think I may have pictures that show the previous landscape, but they would be at our Old Post Rd property. We assumed the Pictometry photos would show the change, unfortunately, the waterfront photos we have seen are afterwards.

We would be happy to discuss any of this with you. We are in Florida until the end of May.

Thank you.

R. Macy Harris III and Louise W. Harris

Chairman Burgie: I am not familiar with the neighboring property and they did not address it. What do they have for accessory structures or anything? I assume that they have a dock on their property?

Diane Graham: Who do you want to answer Phelps or Phil?

Phil Greene: I can answer it. They do have a dock system and I only briefly looked at it from the Ontario County website. There is a roof structure that may be a boat house as well as a pier type dock that stands out into the lake. They also have a break wall section, which gives them a sizeable chunk of flat land space. Guessing is very equivalent in size to what Melissa and Scott have.

Chairman Burgie: Okay. Thank you. I am going to open it up to other Zoning Board of Appeals members to initiate the discussion. Anybody have questions or discussion they would like to add?

Johnathan Gage: What is the actual distance from the shed to their property line? They said something about being right on it. It does not look like that from the paperwork here.

Phil Greene: The proposed shed will be twelve feet away from the property line.

Chairman Burgie: Twelve feet from the property line so we need a side setback variance, do you know? Or is it ten feet for this area?

Phil Sommer: It is ten feet.

Chairman Burgie: I am sorry Phil. What did you say?

Phil Sommer: Yeah. It is ten feet. He is fine. It is a ten foot side setback.

Chairman Burgie: Okay. Ten foot side setback. We do not need a side setback variance?

Phil Sommer: That is correct.

Chairman Burgie: Thank you.

Carol Dulski: Would it help to bring up that picture again with the lot lines? I was confused about the lines so that would help me, if that is alright.

Diane Graham: Is that okay?

Robert Bacon: That would be great.

Carol Dulski: The property line looked like it was a dotted line.

Diane Graham: They have to be ten feet from the facility line so the dotted line shows they are within that setback line.

Carol Dulski: So the property line from the end of the shed to the dotted line, which is the facility line is twelve feet, right?

Jonathan Gage: Correct.

Unidentified person said "Got it."

Carol Dulski: Perfect. Thank you.

Diane Graham: Do you want me to share anymore?

Carol Dulski: I am good.

Diane Graham: Everybody else good?

Robert Bacon: We are good. Yes.

Chairman Burgie: Thank you. As I read the Docking and Mooring Law, which we discussed at the last meeting. Under steep slopes persons are allowed one boat accessory structure as long as there is no existing boat house or existing building on the adjoining parcel within 60 horizontal feet from the mean high water line mark. They are allowed a 120 square foot boat structure plus the square feet of dock equals 270 feet total. My understanding and discussion with Phil Sommer the reason that the accessory boat structure is allowed on a steep slope is to allow them to have some kind of storage shed or boat structure down by the water, where it is accessible. They have this spit of land, which takes them out of the steep slopes classification. They are not allowed to have the accessory structure over the water because they have an available place to put it. This is just my thinking as I go through this. Anybody who can find fault with it, please do that. If we are to say, you are not allowed to have it on the spit of land because it is within 25 foot of the mean high water line, therefore, it is within the setback. They are not steep slopes because of the spit of land, therefore, they cannot have it over water, but we are not going to grant a variance because it is within 25 feet. Basically, we have just eliminated any possibility of having any accessory structure for their boating needs down near the land. It seems like a Catch-22 type situation. What are your thoughts?

Jonathan Gage: I agree Tom. We cannot deny both using that so we should go with the one that is pertinent in this case then.

Chairman Burgie: The one we have the authority to...

Jonathan Gage: The one we have the authority to grant.

Chairman Burgie: We cannot grant the other authority, but we have the authority to grant this one.

Jonathan Gage: Yes.

Chairman Burgie: It would seem very unfair to me. When listing the criteria we have to look at as far as the impact on the environment and the neighborhood, it really isn't any impact as such that has been identified. Nobody has come forward that said that there is an impact just the 25 foot requirement was set there for a reason. The Zoning Board of Appeals was created to look at each individual situation and see if that 25 foot setback requirement makes sense in this case. To me it does not make sense to deny under both the Docking and Mooring Law and under the Town Code. If you take exception to that or do not agree with my logic, please bring it up.

Barbara Howard: Is there any exceptions to the Docking and Mooring Law? It seems to me to be the more reasonable experience. I agree with you. It sounds like you are between a rock and hard place. No pun intended.

Chairman Burgie: The only thing we did talk about at the last meeting. The Zoning Board of Appeals is limited to variances for the facility area lines and outlet setbacks in all tiers of the dock configuration requirements to Tier I. Setbacks from the facility area lines and dock configuration may be varied for the following purposes only - provide safe navigational access. That does not apply here. Or minimize adverse environmental impacts on Canandaigua Lake and its Watershed. So I am trying to make the case that maybe the aesthetics was environmental impact. I cannot buy that. I do not think we have the authority, me personally, to grant a variance to the Docking and Mooring Law based upon an adverse environmental impact to Canandaigua Lake or its Watershed. Otherwise this is a multi-community law and we do not have the authority to vary it.

Barbara Howard: Is there a similar variance approval for the Docking and Mooring Law by variance to multi-municipality law? I do not know the answer to that.

Chairman Burgie: There is no single entity to go to ask for a variance to this. It is multi-community. It is my understanding anyway.

Phil Sommer: The Docking and Mooring is pretty clear there are only two variance you can get and that is what Tom read. There is no wiggle room as far as those variances would go.

Barbara Howard: Thank you.

Chairman Burgie: Any other discussion?

Diane Graham: Can I ask to go back? We do have something on archeological site and wouldn't that fall under number six of the documentation?

Chairman Burgie: Yes. Let's go ahead and read that in.

Diane Graham: It is listed as an archeological site and required under the SEQR. They have a letter saying that it will not affect the project.

Chairman Burgie: Anyone else? If there is no other discussion, then let's determine the findings and see where that leads us.

Finding #1

A motion was made that this a Type II action under the SEQR regulations 617.5 (c)(10) construction, expansion or placement of minor accessory appurtenant residential structures to include storage sheds and 617.5 (c)(12) granting of individual setback lot line variances, therefore, no further action is required by SEQR.

The motion was made by Thomas Burgie and said motion was seconded by Robert Bacon.

All in favor.

Ayes: 5, R. Bacon, T. Burgie, A. Crofton, C. Dulski, J. Gage

Nays: 0

Motion carried.

Finding #2

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 was made by Thomas Burgie and said motion was seconded by Carol Dulski.

All in favor.

Ayes: 5, R. Bacon, T. Burgie, A. Crofton, C. Dulski, J. Gage

Nays: 0

Motion carried.

Finding #3

We have looked at alternative methods of constructing the storage building without a variance and there is no feasible way of doing it.

The motion was made by Thomas Burgie and said motion was seconded by Jonathan Gage.

All in favor.

Ayes: 5, R. Bacon, T. Burgie, A. Crofton, C. Dulski, J. Gage

Nays: 0

Motion carried.

Finding #4

The area variance is substantial, however, there is no alternative.

The motion was made by Thomas Burgie and said motion was seconded by Albert Crofton.

All in favor.

Ayes: 5, R. Bacon, T. Burgie, A. Crofton, C. Dulski, J. Gage

Nays: 0

Motion carried.

Finding #5

The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The motion was made by Thomas Burgie and said motion was seconded by Robert Bacon.

All in favor.

Ayes: 5, R. Bacon, T. Burgie, A. Crofton, C. Dulski, J. Gage

Nays: 0

Motion carried.

Finding #6

The alleged difficulty was not self-created. Mother Nature did a very good job of creating steep slope there.

The motion was made by Thomas Burgie and said motion was seconded by Albert Crofton.

All in favor.

Ayes: 5, R. Bacon, T. Burgie, A. Crofton, C. Dulski, J. Gage

Nays: 0

Motion carried.

Chairman Burgie: Are there any other findings that you would like to suggest?

Robert Bacon: I do not have any other findings to present. I think you covered the basis there Tom.

Jonathan Gage: I agree.

Chairman Burgie: Do we need to make any conditions?

Robert Bacon: No conditions here.

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Chairman Burgie: No place else to put it. They are not going to abuse anything that we recommend here. Then we are to the point of offering a motion to approve or deny the applicant's request. Would anyone like to make that motion?

A motion was made to approve the amended application #2020-0001 based upon the findings that we have stated here.

The motion was made by Robert Bacon and said motion was seconded by Albert Crofton.

Roll call vote:

Robert Bacon – Aye
Thomas Burgie – Aye
Albert Crofton – Aye
Carol Dulski – Aye
Jonathan Gage – Aye
John Holtz – Aye
Barbara Howard – Aye

Motion carried.

Other


There was a discussion about education, board training hours, future meetings, receiving board applications electronically and difficulty with finding properties for review.

Diane Graham will email board members training hours needed and future board applications.

Motion to Adjourn

Being no further business, Albert Crofton 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 8:04 pm.

Respectfully submitted,



Diane Scholtz Graham
Board Assistant