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

Zoning Board of Appeals Meeting Agenda

Wednesday, October 23, 2024
7:00 pm

Meeting in-person or by joining Zoom
https://us02web.zoom.us/j/86987801488?pwd=LNjyBselVvvzQdft5TVn57HAbHu0TP.1
Meeting ID 86987801488, Passcode 562252

Call to Order

Pledge of Allegiance

Minutes
Approval of September 27, 2023, Zoning Board of Appeals Meeting Minutes

Rules of Order

New Business
Area Variance Application 2024-0006
OCPB Referral #: 201-2024
Owners: Jason G. Fox & Megan M. Fox
Representative: Jason Fox
Property: 5956 St Rt 21
Tax Map #: 178.00-1-25.100
Zoned: R-3 (Residential 3 Acres)

Other

Motion to Adjourn

Town of South Bristol Zoning Board of Appeals Meeting Minutes
Wednesday, October 23, 2024

Present: Carol Dulski
Jonathan Gage
Martin Gordon
Barbara Howard

Guests: Jason Fox, Paul Friend

Call to Order
The meeting of the Town of South Bristol Zoning Board of Appeals was called to order at 7:00 pm followed by the Pledge of Allegiance.

Chairperson Howard: We are here because we have a request for an area variance including both the percentage of lot coverage and front setback.

There was a roll call from board members with all present.

Meeting Minutes
Jonathan Gage made a motion to approve September 27, 2023, meeting minutes as written. Carol Dulski seconded the motion. The motion was unanimously adopted by all board members present.

Rules of Order
Jonathan Gage read the Rules of Order.

New Business
Public Hearing
Variance Application 2024-0006
County Planning Board Referral #: 201-2024
Owner: Jason & Meghan Fox
Representative: Jason Fox
Property: 6956 St Rt 21
Tax Map #: 191.17-1-20.110
Zoned: R-3 (Residential 3 Acres)

Chairperson Howard: Diane, please read the legal notice.

Diane Graham: Yes. Legal 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:

2024-0006 for property owned by Jason G. Fox and Meghan M. Fox located at 5956 St Rt 21, tax map #178.00-1-25.100. The owners are looking for a 20.1-foot variance with a 29.9-foot front setback from highway right-of-way line of St Rt 21 where 50 feet is required by town code and a 3.6% lot coverage variance for a total lot coverage of 23.6% where 20% is required per town code for placement of a 22-foot by 36-foot garage and apron.

Said hearing will take place on the 23rd day of October 2024 beginning at 7:00 pm at the South Bristol Town Hall, 6500 West Gannett Hill Road, Naples, NY 14512.

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

Chairperson Howard: At this point Jason please tell us what you want, why you want it and why we should give you the variance.

Jason Fox: The property currently does not have a garage. I would like to put one up. We have looked at different locations on the property and this is the flattest location on the property and with the easement that is in place for Mr. Bills driveway seems like the best location we could put it without disturbing any additional square footage of the property by utilizing that existing easement/driveway.

Chairperson Howard: Any questions from board members?

Martin Gordon: There is an easement that is a gravel driveway and was that included.

Jason Fox: It was.

Martin Gordon: It is not 50%.

Diane Graham: It is a common driveway. It must be man-made materials for 50%, which are different.

Chairperson Howard: What you are asking are gravel driveways permeable or not and they are not.

Martin Gordon: I understand. The fact that it is a shared driveway and an easement.

Jason Fox: It is not shared now. It will be moving forward.

Martin Gordon: It would be moving forward. Okay.

Jason Fox: Without that easement running through the property, the additional coverage would not come into play. I would be well within it.

Chairperson Howard: Yes.

Martin Gordon: The other thing that I know is that it is not really a question. I want to wait until other people have a chance to ask questions here.

Jonathan Gage: The one thing we discussed when I was out today during my visitation. Jason came out and we talked a little bit there and asked some questions. He was answering a question about water runoff. Would you like to expound on that a little bit?

Jason Fox: Yes. On one of the emails, you sent me with questions about how water management would occur. I mentioned I plan to put up gutters on the garage and use catchment barrels. The garage is going in place where my current vegetable garden is. I thought I would utilize the garage as a way to catch the water, keep it from running off and repurpose it.

Martin Gordon: If we approve this with catchment barrels then you will have to have catchment barrels and gutters. If you are not sure you want to do that then don't put that requirement in your application.

Jason Fox: If that question was not a specific requirement, then I probably will not do it on day one. If it is a requirement, I will.

Chairperson Howard: You have a little creek that runs down the side of your property. I noticed the other day when I was there that it is almost nothing, it is almost dried out. Is that typical?

Jason Fox: It is typical. It is pretty much seasonal. It moves in the spring and then it pretty much dries up.

Chairperson Howard: Have you had any issue with it?

Jason Fox: No. Even with some of the substantial rains we have had over the last couple of years it has not been an issue.

Chairperson Howard: The county planning board brought it up and it is what they do.

Diane Graham: I think you were referring that a structure has to be 25 feet from the edge of the bank.

Chairperson Howard: They always talk about watershed and being careful with it.

Diane Graham: It should be 25 feet from the bank to your garage.

Jason Fox: It is showing 30 plus feet.

Diane Graham: I am putting it in the record that we asked it.

Jason Fox: I could not recall off the top of my head, so I was referring to the survey.

Chairperson Howard: The whole creek stays on the other side of the 30 feet.

Jason Fox: Yes. It is fully contained within Mr. Bills property.

Martin Gordon: Do you want comments now too?

Diane Graham: Right now, it is the CEO rationale. Then visitation.

Chairperson Howard: We will get there Marty.

Martin Gordon: Okay.

Chairperson Howard: Is it something directed at Jason?

Martin Gordon: No.

Chairperson Howard: Okay. Then let's hold off.

Martin Gordon: It is a comment about my review of the plans.

Chairperson Howard: Okay. Let's hold off until we get to the ZBA portion. At this point the CEO is going to give us the rationale.

Diane Graham: It should be the second page of the application.

Scott Martin: Under meets town code use requirements – yes. Meets town code area dimensional requirements – no. Basically to sum up what Mr. Fox said he is seeking a 21.1-foot setback area variance where 50 foot is required and a 3.6% variance for lot coverage where 20% lot coverage is required.

Chairperson Howard: Any visitation reports?

Carol Dulski: I stopped by on Saturday before I realized what they were planning on doing. They want to put a garage right there. It is the only place that you can put a garage. That is pretty much it. Bills Road you said was a shared road?

Jason Fox: It will be once the garage is built. Currently it is just an easement for Mr. Bills.

Carol Dulski: Do we have anything from that owner?

Jason Fox: No. I have spoken with him about the structure, but I do not have anything in writing.

Chairperson Howard: I spoke with him by accident, but nevertheless I did have a conversation with Peter Bills. He was in support of it. His only concern was winter driving up and down the hill with the garage at the bottom of it and that you may be going out at the same time as each other. His only concern now that it will be a shared driveway in the winter is not the easiest thing in the world to navigate.

Jason Fox: No, it is challenging in the winter.

Chairperson Howard: It was challenging for me even in the summer.

Diane Graham: Something came to mind. You have an easement for him but is the easement on your deed for you to use it?

Jason Fox: No.

Martin Gordon: It does not need to be.

Jason Fox: It is my property. I can use it for any function that easement was granted to Peter Bills.

Diane Graham: Yes. Okay. I was thinking it would be in the deed.

Chairperson Howard: Anything else?

Martin Gordon: I reviewed the plans and noted a couple of things here. I also want to put in the record that I am a registered professional engineer. So, P.E. on the Board. I think that is significant when I am looking at plans. When I make a comment, it is based on principles that I am licensed to opine on. A couple of observations. First, the house is going to be closer to the road or actually is currently than the proposed garage. The two-story frame house gets as close at 19.4 feet to the road. Proposed garage 29.9 feet. The other thing I note is that typically the reason we have limitation to area for water runoff is the fact that it is less than 5% is sort of within the range of tolerance of any calculations so I do not see that as a big deal. I guess my overall evaluation is there is a lot of things here telling us that we should approve this based on an engineering look.

Chairperson Howard: Jon, you said you had a visitation?

Jonathan Gage: Yes. I visited today and looked it over and talked to Mr. Fox quite a bit. One of the concerns I had was with Peter's house directly behind it, would that be blocking his view and he stressed that with the design of the garage as such that it should not be in effect, is that correct?

Jason Fox: Yes.

Jonathan Gage: On the north side is an old barn which I have been in that old barn before, and I am not sure if it being used now as the hedgerow or brush there on that side. On the south side is his house. Across the road is your house over there. That is the only one that I could see actually would even be seeing the house from there. I noticed as I drove down the road other places along that road when I drove down the road other places along that are as close or closer to the road than either your house or definitely the garage. Those were my observations from my visitation.

Chairperson Howard: I also, as I mentioned earlier, I met his daughter while Jason was out of town. She showed me basically where everything was going to be, which I suspected was the same place because it was leveled off. The slope issue is more tiered than sloped. At least three places that it tiers off into flat space for the driveway. I guess the only thing I wasn't comfortable with was the current driveway that you have now that runs from the house to the exit of 21, is that going to be changed? Are you going to stop using that?

Jason Fox: It will probably remain.

Chairperson Howard: Okay.

Jason Fox: That is included in the coverage analysis.

Chairperson Howard: Leaving the driveway as it is.

Jason Fox: Yes.

Chairperson Howard: Any other questions or anything else?

Diane Graham: Lot size?

Chairperson Howard: Current lot size?

Diane Graham: Yes.

Chairperson Howard: Currently, this answers Marty's question to some extent. Currently, R-1, R-2 zone changed sometime late 1989ish. There were some major developments being brought before the Planning Board and the Town Board. The zoning rules were revamped considerably. Almost everything in that residential area including down the road where we live on mostly were mostly R-1, residential one-acre. That went to two, three, and five's depending on where it was.

Diane Graham: It did not go to three and five until later. It went to two.

Martin Gordon: Why is that relevant to this discussion?

Diane Graham: The lot size is non-conforming with three acres.

Martin Gordon: It is previously non-conforming.

Chairperson Howard: If you would let me finish. The issue was back then when they originally split it. It was listed as two acres into two one acres. They are both slightly shy of the one acre. Now they are in R-2 and not an R-1. Basically, they are not conforming. I consulted with the CEO and Diane that we need to have him get a Certificate of Non-Conformity that lists everything that is out of conformance. We have not been able to find one here. That does not mean we do not have one someplace filed under Q instead of P or something.

Diane Graham: I looked under both properties.

Chairperson Howard: We do need to have one.

Diane Graham: Yes.

Chairperson Howard: Again, it is directly related to this spot. He will not be able to do anything with the property unless he gets it. It is out of conformity so he cannot do anything with the property until he gets that. He needs to come down and talk to our CEO and get a Certificate of Non-Conformity.

Martin Gordon: That is not a big deal.

Chairperson Howard: This one is a big one only because we cannot seem to find the original certificate of non-conformity.

Diane Graham: There was only one and that was for the house. Not for the lot size.

Chairperson Howard: That was for the setback you are saying but not the lot size. It is long enough ago from my viewpoint that the Certificate of Non-Conformity cleans that up for you.

Jason Fox: Okay.

Chairperson Howard: If anybody on the Board would like to share previous better knowledge than I have. Okay. We are going to determine the SEQR, and I have had the delight of having to go through the whole SEQR handbook in the last few days. I am going to recommend that it is a Type II action under paragraph 617.5 (c)(12), (c)(16), and (c)(17).

Diane Graham: For the setback.

Chairperson Howard: It is for the setback and oh that is right. It is separate. Okay. That is for the setback. An undesirable change will not be produced.

Diane Graham: That is later. That is when you make your findings.

Chairperson Howard: So, I do not need to do the rest of it. Alright. Okay.

Diane Graham: That will be later. Just identifying the SEQR numbers.

Chairperson Howard: Do I need to approve that?

Diane Graham: No. Just determining it. Then you make your findings and that is when we make the motions. That is on the worksheet to help you guys.

Chairperson Howard: So, that is my recommendation.

Diane Graham: Does everybody agree with it, I guess. Yes. Then a motion. Sorry.

Martin Gordon: Yes. The SEQR status I agree for both the setback and lot coverage.

Diane Graham: If everybody does, then make a motion about her findings about the SEQR. Yes.

Martin Gordon: Are we going to do all the findings together in one motion?

Diane Graham: According to our process it says to approve it. Do the finding and motion later.

Chairperson Howard: Yes. We approve it as finding #1.

Diane Graham: If you agree with what the Chairperson Howard said then move on.

Jonathan Gage: Second the motion?

Diane Graham: No. We will do that later. Just making sure that you do not disagree with what she said.

Jonathan Gage: No.

Martin Gordon: No.

Chairperson Howard: We have done that and now it is time for us to have a discussion and open public hearing. The public hearing is opened. If anyone from the public would like to speak now here is your chance.

Chairperson Howard: Please come up and identify yourself. Thank you.

Paul Friend: My name is Paul Friend. I live at 5955 St Rt 21 literally across from Jason's property. I am here to support him. I am completely supportive of what he is trying to do to enhance his property. I know it is going to be done tastefully. I know it is going to be done properly. I am going to be looking at it directly up the hill. I have no problem with it whatsoever. I know him and Meghan, and I know they will do it an appropriate manor. Thank you.

Chairperson Howard: Any other public comments? Diane, do we have any letters?

Diane Graham: There is nobody on Zoom and nothing in writing.

Chairperson Howard: I will close the public hearing. Do we have any other officer's documentation?

Diane Graham: Do you want me to read it?

Chairperson Howard: Do we have to read them into the minutes?

Diane Graham: Yes.

Chairperson Howard: Alright. Then you can read them. I am going to save my voice.

Diane Graham: Tyler Ohle, Canandaigua Lake Watershed comments regarding the NYS Department of Health on expansion area of his septic system. Initially he said the proposed garage must meet DOH minimum setback of twenty-foot from absorption and expansion area and a ten foot from septic tank and pump tank confirming that the leach field and system components should be staked out for construction. He said, as long as there is no curtain, French drains installed a twenty-foot setback from the fifty percent expansion area is okay. No other comments. So, part of the construction he wants staked out.

New York Parks, Recreation Historic Preservation letter dated September 23, 2024, for this property 24PR08536. Based upon the review it is the opinion of the OPRHP that no properties including archeological and historic resources listed in or eligible for the NYS National Registers of Historic Places will be impacted by this project.

Ontario County Planning Board referral review. They outlined some of the same things we are going to be going through as far as the findings and things like that. They had one comment. It was if granted the variance should create as little disturbance in the steep slope area as possible. Their motion was to retain

the referral as a Class 1 and return to local board with comments. They did not approve or deny they came back with comments.

Chairperson Howard: The application addresses a couple of other comments. Thank you, Diane. Now it is ZBA discussion and debate period and then determine the findings.

Jonathan Gage: I made all the comments that I had prepared. No more.

Chairperson Howard: I think at this point we can determine our findings. Do we want to do the motions all at once or each one individually.

Diane Graham: Each variance we will do individually.

Front Setback Variance Findings:

1. Barbara Howard made a motion that the requested variance is covered by SEQR paragraph 617.5 (c)(12) and 617.5 (c)(16) as a Type II action and requires no further review. Carol Dulski seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

2. Jonathan Gage made a motion 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. Barbara Howard seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

3. Martin Gordon made a motion that the benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue, other than an area variance. Jonathan Gage seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

4. Carol Dulski made a motion that the requested area variance is not substantial. Martin Gordon seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

5. Barbara Howard made a motion that the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Carol Dulski seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

Jonathan Gage: I make a motion that the alleged difficulty was not self-created.

Chairperson Howard: I am going to question that because the applicant actually said it was. Why do you think it was self-created?

Diane Graham: Because he is putting something on the property.

Chairperson Howard: Is there something else you were thinking of?

Jason Fox: I am sorry I did not catch that.

Chairperson Howard: You answered the question that it was self-created.

Jason Fox: That was incorrect. It was not self-created unless I misunderstood the question. I did not create any difficulty.

Diane Graham: You are putting a barn on the property, so you are creating it is the way I look at it.

Jason Fox: I am creating this okay. Yes.

6. Jonathan Gage made a motion that the alleged difficulty was self-created. Carol Dulski seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

Martin Gordon made a motion to approve the applicant's request for a 20.1-foot variance with a 29.9-foot front setback from the highway right-of-way line of St Rt 21. Barbara Howard seconded the motion.

Roll Call Vote:
Carol Dulski – Aye
Jonathan Gage – Aye
Martin Gordon – Aye
Barbara Howard – Aye

Motion carried.

Diane Graham: Any conditions that we did not mention. That would be on the next one probably. Okay.

Lot Coverage Variance Findings:

1. Martin Gordon made a motion that the requested variance is covered by SEQR paragraph 617.5 (c)(17) as a Type II action and requires no further review. Barbara Howard seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

2. Jonathan Gage made a motion that an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties created by granting the area variance. Martin Gordon seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

3. Carol Dulski made a motion that the benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue, other than an area variance. Barbara Howard seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

4. Barbara Howard made a motion that the requested area variance is not substantial. Martin Gordon seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

5. Martin Gordon made a motion that the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Carol Dulski seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

6. Martin Gordon made a motion that the alleged difficulty was self-created. Jonathan Gage seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard
Nays 0

Motion carried.

Diane Graham: Any conditions or other findings?

Carol Dulski: Do we have to say anything about the non-conformity?

Diane Graham: It needs one for the variance.

Chairperson Howard: It is not really a condition, is it just another finding?

Diane Graham: According to the previous chair you have to have that in place before you can get a variance. You cannot have a variance on a non-conforming lot unless you have the certificate.

Chairperson Howard: It is a condition of the variance. Okay.

<u>Condition:</u>
Barbara Howard made a motion that the owner shall obtain a Certificate of Non-Conformity prior to a building permit. Carol Dulski seconded the motion.

All in favor.

Ayes 4, C. Dulski, J. Gage, M. Gordon, B. Howard

Nays 0

Motion carried.

Martin Gordon made a motion to approve the applicant's request with condition for a 3.6% lot coverage variance and a total lot coverage of 23.6%. Jonathan Gage seconded the motion.

Roll Call Vote:
Carol Dulski – Aye
Jonathan Gage – Aye
Martin Gordon – Aye
Barbara Howard – Aye

Motion carried.

Diane Graham: You have your approval.

Jason Fox: Thank you.

The Board discussed non-conformities, board motions and processes, the chairperson is looking for more board member participation at the meetings, and the Town is actively looking for new board members. Martin Gordon was asked to review and determine SEQR on board applications.

Motion to Adjourn
Having no further business, Martin Gordon made a motion to adjourn the meeting. Carol Dulski seconded the motion. The motion was unanimously adopted, and the meeting was adjourned at 7:51 pm.

Respectfully submitted,

Diane S. Graham

Diane Scholtz Graham
Board Assistant