

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD JANUARY 25, 2016

PRESENT were ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ABSENT was CHAIRMAN MARTIN STEINBACH.

ALSO PRESENT was MICHAEL CZORNYJ, Brunswick Building Department.

Member Clemente served as acting chair for the meeting.

The members of the Zoning Board of Appeals acknowledged for the record the public service and contributions to the Brunswick community made by Caroline Trczinski as a member of the Brunswick Zoning Board of Appeals for many years, and thanked her for her service on the Board.

The Zoning Board members welcomed Candace Sclafani as a new member of the Brunswick Zoning Board of Appeals.

The Zoning Board members reviewed the draft minutes of the December 21, 2015 meeting. Upon motion of Member Shover, seconded by Member Schmidt, the minutes of the December 21, 2015 meeting were unanimously approved without amendment (Member Sclafani abstaining, as not present at the December 21 meeting).

The first item of business on the agenda was the area variance application submitted by William Barber for property located at 121 Brunswick Road and Oxford Circle. The applicant seeks a side yard setback variance for the construction of a garage at this location. Attorney

Gilchrist stated that he has researched this application and reviewed the matter with the Building Department. This parcel located at 121 Brunswick Road and Oxford Circle is situated at the intersection of Brunswick Road and Oxford Circle, and constitutes a corner lot. The applicant has informed the Brunswick Building Department that he has acquired an additional lot located to the rear of this parcel, in the northerly direction. There remains only one additional parcel located to the north before intersecting the Oxford Circle cross-street. The applicant has informed the Brunswick Building Department that it is his intent, if it has not been completed already, to legally merge the additional parcel he acquired immediately to the north of 121 Brunswick Road into his original parcel, maintaining one tax parcel but larger in size. This would result in only two lots existing along the intersections of Brunswick Road and Oxford Circle, and create a situation where back-to-back corner lots are created. Pursuant to the area and bulk table of the Brunswick Zoning Ordinance, in a situation where back-to-back corner lots exist, the side yard setback for accessory garages is reduced to 10 feet from the side yard lot line adjacent to the public road. In this case, this would result in back-to-back corner lots with an accessory garage located approximately 11 feet from the side yard lot line adjacent to Oxford Circle, negating the need for a side yard setback variance. Based on this research and review, the Brunswick Zoning Board of Appeals determined to adjourn this matter, subject to proof being submitted by the applicant that the legal merger of parcels has been completed so as to create legal back-to-back corner lots at this location. This matter has been adjourned without date, pending submission of proof of legal merger of the subject parcels by the applicant to the Brunswick Building Department. Douglas Hoag, 28 Oxford Circle and owner of the remaining back-to-back corner lot in this situation, requested a further explanation on this matter from the Zoning Board of Appeals, which was provided. This matter is adjourned without date.

The next item of business on the agenda was the continuation of a public hearing on the area variance application submitted by Daniel Smith for property located at 899 Hoosick Road. The applicant seeks an area variance with respect to the height of a garage constructed at this location, and also a side yard setback variance with respect to the garage structure. The applicant, Daniel Smith, failed to appear. Attorney Gilchrist stated that he had reviewed the comment letter submitted by the attorney for the adjacent property owners, Brazee, and determined that an additional variance is required in this matter. Specifically, after reviewing the matter with the Brunswick Building Department, it is determined that a variance for percentage of lot coverage for private garages in this Zoning District is required. The application will need to be amended, and the public hearing re-noticed to include the additional variance required in this matter. Member Clemente noted that the public hearing had been noticed to be continued this evening, and members of the public may be present who wish to provide additional comment at this time. Member Clemente opened the floor for receipt of any additional public comment at this time. Attorney Robert Panasci, representing the adjacent property owner, Brazee, submitted additional photographs for consideration by the Zoning Board in this matter, and stated that in light of the amendment to the application and continuation of the public hearing at the next Zoning Board meeting, he will allow the Zoning Board members time to review the additional photographs and be present at the next Zoning Board meeting. The Zoning Board members determined that the February meeting will be held on February 22, rather than February 15, which is President's Day. This matter will be re-noticed for public hearing to be scheduled for the February 22, 2016 meeting commencing at 6:00 p.m.

The next item of business on the agenda was an area variance application submitted by Voland Organization, LLC for property located at 830 Hoosick Road. The applicant seeks an area

variance with respect to the height of an ornamental gable-type addition to the flat roof of the existing building at this location. Ken Voland of Voland Organization, LLC was present. Member Clemente inquired whether there were any changes to the application since the December meeting. Mr. Voland stated there were no changes to the application. The Zoning Board then opened a public hearing on this application. The notice of public hearing was read into the record, noting that such notice had been published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent properties. Mr. Voland presented an overview of the proposed action, where he seeks to add an ornamental gable-type addition to the flat roof of the existing building to dress up the property and make it more aesthetically pleasing. Mr. Voland stated that he proposed to add three ornamental façades, and the two façades on each end of the building had already been completed as they are below 30 feet in height, but that he was looking to make the building distinct and have the center façade be a little higher, which resulted in a total façade height of 32 feet above grade, where a 30 foot height limit is set in the Brunswick Zoning Code for this Zoning District. Mr. Voland stated that he was looking for the height variance to allow the completion of the construction of the façade. Member Clemente opened the floor for the receipt of public comment. No members of the public wished to provide comment. Member Clemente asked Mr. Czornyj whether any written comments had been received. Mr. Czornyj noted that an email with comments on the proposal had been received from the Brunswick #1 Fire Department, and distributed a copy of those comments to the Zoning Board members for review. Mr. Czornyj also noted that the Brunswick #1 Fire Department Chief, Gus Scifo, was present at the meeting. Attorney Gilchrist generally reviewed the comments of the Fire Department, which identified the State Fire Code provisions pertaining to aerial fire apparatus access roads. The Fire Code states that for buildings or portions of buildings or facilities exceeding

30 feet in height must include an adequate fire apparatus access road, which the Fire Code states must have a minimum width of 26 feet. Mr. Scifo had measured the access driveway both in front of this commercial building, as well as completely around the back of the building, and noted that the width of the road is only 23 feet wide at its maximum. The Brunswick #1 Fire Department states that it will not bring emergency response vehicles onto the front access road to this building, due to this Fire Code requirement, and would therefore need to fight any fire at this location from Hoosick Road. Mr. Scifo was present, and confirmed the Brunswick #1 Fire Department comments, but stated for the record that the Brunswick #1 Fire Department was neither for nor against this application, but was simply providing information to the Zoning Board members to take into account during their deliberations. Mr. Voland stated that this building was built into the hill, and that the front of the building was two floors, but with the topographic grade, the back of the building had only one floor of access. Mr. Scifo stated that this does not change the Fire Code requirements, and that any fire at this structure would need to be fought from Hoosick Road. Member Shover confirmed that the extent that the variance was two feet over the 30 foot height limit. Member Czornyj confirmed the height measurements. Member Schmidt asked Mr. Scifo whether the Brunswick #1 Fire Department would fight a fire at this location from Hoosick Road if the center gable was measured to 30 feet only, instead of 32 feet. Mr. Scifo stated that the Brunswick #1 Fire Department would fight the fire from Hoosick Road even if the center gable was limited to 30 feet, and that the additional two feet would not affect how the fire needed to be fought at this location. Mr. Scifo stated that the building is simply too close to the front curb along Hoosick Road to allow safe access for fire apparatus. The Zoning Board members concluded that the area variance would therefore have no impact on firefighting response at this location. Member Clemente inquired whether there were any further public comments on this application. Hearing

none, Member Shover made a motion to close the public hearing on the Voland Organization area variance application, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing closed. Member Clemente then inquired whether the Zoning Board was prepared to proceed with deliberations on this application. The Zoning Board members concurred that deliberations at this time should proceed. Attorney Gilchrist stated that the Zoning Board must first make a determination of environmental significance under the State Environmental Quality Review Act, as this application seeks an area variance in connection with a commercial facility. Attorney Gilchrist reviewed the standards for adoption of a positive declaration and a negative declaration under SEQRA. Member Clemente stated that in her opinion, the applicant seeks to improve the aesthetic nature of the existing building, and no other changes are proposed for the facility. Member Clemente also stated that the type of ornamental façade being proposed was consistent with other commercial establishments at this location, including the Ace Hardware Store and Tractor Supply. The remaining Zoning Board members concurred that no potential significant adverse environmental impact is anticipated. Member Schmidt then made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Shover. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board then deliberated on the elements to be considered in connection with an area variance, and determined that this variance would not produce an undesirable change in the character of the neighborhood nor create a detriment to nearby properties; that the requested variance was not substantial; that the variance would not have an adverse effect on the physical or environmental conditions in the neighborhood or district; and while the requested variance is self-created, that factor is relevant but not determinative. The Zoning Board also determined that there was an alternative, which was to limit the center façade

to a total of 30 feet in height, but that defeats the purpose of the applicant in terms of creating a differential façade on the building. Also, the Zoning Board members acknowledged the comments of the Brunswick #1 Fire Department, but noted that firefighting response would not be affected by requiring the center façade to remain at 30 feet or allowing the façade to be built to 32 feet in height. Based on these deliberations on the elements for the area variance, and in balancing the benefit to the applicant as weighed against any detriment to the community at large and neighborhood in particular, the Zoning Board members determined to grant the requested area variance. Member Shover made a motion to approve the variance, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the requested area variance allowing a 32 foot high gable-type façade to the existing commercial building located at 830 Hoosick Road was granted.

The next item of business on the agenda was the special use permit application submitted by Kevin Hayes for property located at 10 Victoria Avenue. The applicant seeks a special use permit for a multi-family use at this location. Kevin Hayes was present. Member Clemente asked whether there were any changes to the application since the December meeting. Mr. Hayes stated there were no changes to the application. The Zoning Board then opened a public hearing on this application. The Notice of Public Hearing was read into the record, noting that the notice had been published in the Troy Record, placed on the Town Signboard, posted on the Town website, and mailed to owners of adjacent properties. Mr. Hayes presented an overview of the special use permit request, stating that his parents had purchased the house in 1956, and at that time it was used as a two-family house. Since the time his parents purchased the house in 1956, this location had always been occupied and used as a two-family house. Mr. Hayes stated that his parents are deceased, that he inherited this location, and that he was looking to sell the property. Upon

preparation for sale, it was discovered that the Town of Brunswick records identify this property as a one-family location, and that he wants to correct the record on this and make the Town records consistent with the use of this location as a two-family residence as it has been for the past 60 years. The Zoning Board then opened the floor for receipt of public comment. Charles Golden, 318 Pinewoods Avenue, stated that his son is the owner of property located at 12 Victoria Avenue, that this location has always been used as a two-family home, that there is ample parking provided for the two-family home, that parking has never been an issue to his knowledge, and that he supports the issuance of the special use permit in this matter. Sherry Calautti, 5 Victoria Avenue, questioned Mr. Hayes as to whether the lot located to the rear of the house would be sold with the property. Mr. Hayes stated that the lot would be sold with the property. Member Clemente asked whether there were any written comments received by the Building Department. Mr. Czornyj stated no written comments had been received. Member Clemente asked whether there were any further questions or comments by the Zoning Board members. There were no additional questions or comments from the Zoning Board members. Thereupon, Member Schmidt made a motion to close the public hearing on the Hayes special use permit application, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed. Member Clemente asked whether the Zoning Board members were prepared to proceed with deliberations. The Zoning Board members proceeded to deliberate on this application. Attorney Gilchrist stated that the first determination for the Zoning Board members was to make a determination of environmental significance under SEQRA, and reviewed the standards for adoption of a negative declaration and positive declaration under SEQRA. The Zoning Board members generally concurred that the applicant is not seeking any new use or additional construction activities at this location, but merely seeks a special use permit to confirm the use of

the property as it has been used for the past 60 years. Based upon no changes to the property, Member Schmidt made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Shover. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, the Zoning Board members reviewed the special use permit application and standards, determining that the special use permit would not result in any negative impact to the public health, safety, or general welfare; that the two-family unit was located so that it had adequate transportation facilities, water supply, fire and police protection, waste disposal and similar facilities; the Zoning Board also found that there was adequate parking spaces available for use of the facility as a two-unit building; that the use of the structure as a two-unit facility would not negatively impact neighborhood character, as the property had been used as a two-unit facility for the past 60 years; and that the special use permit to allow the continued use of the building as a two-unit facility would not cause undue traffic congestion or create traffic hazards. Member Clemente confirmed that each of the units has two bedrooms, and Mr. Hayes stated that each unit has two bedrooms and that adequate parking exists for these units. Member Clemente confirmed with the applicant the parking area layout at this location, and the Zoning Board found that adequate parking is available for use of the property as a two-unit facility. Based on these deliberations and findings, Member Sclafani made a motion to approve the special use permit for use of 10 Victoria Avenue as a two-unit residential facility, which motion was seconded by Member Schmidt. The motion was unanimously approved, and a special use permit issued for use of 10 Victoria Avenue as a two-unit residential facility.

The next item of business on the agenda was the special use permit application submitted by MHH Enterprises, LLC for property located at 1 Cortland Street. The applicant seeks a special use permit for a multi-family use at this location. Thomas Chenaille was present for the applicant,

stating that the principal of MHH Enterprises, LLC unfortunately had health issues, but had notified the Brunswick Building Department of his inability to attend the meeting and authorized Mr. Chenaille to represent the applicant. Mr. Chenaille stated that he was a previous owner of the property with the principal of MHH Enterprises, and was familiar with the property. Member Clemente asked Mr. Chenaille to present a brief overview. Mr. Chenaille stated that the property located at 1 Cortland Street had been used as a 6-unit facility for residential purposes for several years, and that each of the units had separate gas meters and electric service. Mr. Chenaille stated that when the current owner sought to refinance the property, a review of the Town records showed that while the facility is identified as multi-family use, there were records in the Brunswick Building Department indicating that the facility was used as a 4-unit facility rather than as a 6-unit facility. The applicant is seeking to update and correct the Town records on this point. The Zoning Board then opened the public hearing on the application. The Notice of Public Hearing was read into the record, noting that the public hearing notice had been published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent properties. The Zoning Board opened the floor for receipt of public comment. John Mainello, 4 Joseph Street, stated that he was the owner of property adjacent to 1 Cortland Street, that to his knowledge this location had always been used as a 6-unit multi-family facility, that the current owners were very good landlords and property maintenance had been much better than in the past. Member Shover asked whether the property was currently being used as a 6-unit facility. Mr. Chenaille stated that the current use is 6 units. Member Shover asked whether there was adequate parking for 6 units. Mr. Chenaille stated that there were 6 off-street parking spaces, and that there had been no issues regarding parking availability in the past. Mr. Mainello concurred in that statement. Member Clemente asked about the total number of bedrooms in each unit. Mr. Chenaille stated that there

were three 1-bedroom units, two 2-bedroom units, and one 3-bedroom unit. Member Clemente requested any additional public comment on the application. Hearing none, Member Sclafani made a motion to close the public hearing, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. Member Clemente asked whether the Zoning Board was prepared to proceed with deliberations on the application. The Zoning Board proceeded to deliberate on the application. Attorney Gilchrist stated that the Zoning Board must first make a determination of environmental significance under SEQRA, and reviewed the standards for adoption of a positive declaration and negative declaration under SEQRA. The Zoning Board members generally concurred that there were no proposed changes in use on the property, nor any additional construction or alteration of the property, and concluded that there were no potential significant adverse environmental impacts from this application. Member Schmidt then made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Shover. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board then proceeded to deliberate on the application. The Zoning Board members discussed the parking for this facility. The information on the application as well as from public comment showed that there had not been any issues concerning availability of parking or traffic congestion from past use of this location as a 6-unit facility. Member Schmidt commented that the availability of additional off-street parking may be more significant for proposed new construction, but that the record in this case showed the facility has been used for 6 units over a period of years without any issue concerning availability of parking or traffic congestion. Member Sclafani noted that if parking or traffic congestion had been a problem in the past, she would anticipate public comment to that effect during the public hearing. It was also noted that the Town records indicated multi-family use for this location, but information in the

Building Department identified the use as 4 units as opposed to 6 units, and that the application merely sought to address Building Department records without any changes proposed for the facility. The Zoning Board proceeded to determine that the continued use of property located at 1 Cortland Street as a 6-unit multi-family facility would not negatively impact public health, safety or general welfare; that past use of the facility showed that there were no issues concerning availability of transportation facilities, water supply, fire and police protection, waste disposal or similar facilities; that the record disclosed adequate parking for use of this property as a 6-unit residential facility; that the continued use of this location as a 6-unit residential facility would not negatively impair neighborhood character or surrounding properties; and that the special use permit would not cause undue traffic congestion or create any traffic hazard. Based on these deliberations and findings, Member Sclafani made a motion to approve this special use permit for 1 Cortland Street to be used as a 6-unit multi-family residential facility, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the special use permit issued for 1 Cortland Street for use of that location as a 6-unit multi-family residential facility.

One item of new business was discussed.

An area variance application has been submitted by Reiser Builders, Inc. for property located at 3 Brook Hill Road. Henry Reiser of Reiser Builders, Inc. was present, and explained that in connection with construction of a new home at 3 Brook Hill Road, and based upon a final survey prepared after the home had been constructed, it was determined that the house was placed a distance of 21 feet 6 inches from the right side line, as opposed to the required 25 foot setback for the right side property line. Mr. Reiser explained that the site had been surveyed prior to construction, including a location for the National Grid power installation, and that it appeared that in connection with the installation of the power at this location, certain survey stakes had been

relocated in the field, resulting in the final house placement being 21 feet 6 inches from the right side property line as opposed to 25 feet. Mr. Reiser stated that this does not impact the appearance of the Brook Hill subdivision, and that the lot immediately adjacent to 3 Brook Hill Road has the house location approximately 70 to 80 feet off the property line, and did not anticipate any objection from the owner of this parcel. The Zoning Board members reviewed the application materials, and found them to be complete for purposes of moving this matter to public hearing. The public hearing on this application is scheduled for the February 22, 2016 meeting, to commence at 6:15 p.m.

The index for the January 25, 2016 meeting is as follows:

1. William Barber - Area variance - adjourned without date;
2. Daniel Smith - Area variance - 2/22/2016 (public hearing to continue at 6:00 p.m.);
3. Voland Organization, LLC - Area variance - Granted;
4. Kevin Hayes - Special use permit - Granted;
5. MHH Enterprises, LLC - Special use permit - Granted;
6. Reiser Builders, Inc. - Area variance - 2/22/2016 (public hearing to commence at 6:15 p.m.).

The proposed agenda for the February 22, 2016 meeting currently is as follows:

1. Smith – Area variance (public hearing to continue at 6:00 p.m.);
3. Reiser Builders, Inc. - Area variance (public hearing to commence at 6:15 p.m.).

Zoning Board of Appeals
TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

**MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING
HELD FEBRUARY 22, 2016**

PRESENT were CHAIRMAN MARTIN STEINBACH, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ALSO PRESENT were MICHAEL CZORNYJ and KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the January 25, 2016 meeting. Member Clemente had a question concerning the Barber application, noted at page two of the January 25 minutes, and inquired whether the lot merger for the parcels located on Brunswick Road and Oxford Circle had been completed. Mr. Czornyj confirmed that the lot merger had been completed. Upon motion of Member Clemente, seconded by Member Shover, the minutes of the January 25, 2016 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Daniel Smith for property located at 899 Hoosick Road. Daniel Smith was present. The Zoning Board noted that the area variance application had been amended to include an area variance with respect to the percentage of lot coverage for private garages at this location. The public hearing, which had remained open on this application, had been re-noticed to include the additional variance request for percentage of lot coverage. The notice of public hearing was read into the record, noting that the public hearing notice had been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties.

Chairman Steinbach then opened the floor for receipt of public comment on the variance requests. Hyde Clark, Esq. of the law firm of Young Sommer, representing the adjacent property owners, Brazee, stated that both the Brazee survey and the Smith survey submitted on the application show an encroachment with part of the extended garage structure going on to the lands of Brazee, and if the area variance is approved, this would result in a taking of the Brazee property; and that Brazee would rely on the prior written comments and other documents submitted by them on this area variance application. There were no further comments from the public. Chairman Steinbach then said he would entertain a motion to close the public hearing. Member Schmidt made a motion to close the public hearing on the Smith area variance application, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing closed on the Smith area variance application. Chairman Steinbach then reviewed the procedure with attorney Gilchrist. Attorney Gilchrist stated that the Zoning Board now had a period of 62 days in which to render a determination on the area variance application given the close of the public hearing, unless that time frame is extended upon consent of the applicant. Attorney Gilchrist also provided a copy of an email submitted by Brazee to the Brunswick Building Department concerning this matter, which was sent on February 16, 2016, in which the statement was made that the members of the Zoning Board had not yet gone to the Smith property to view the premises. In light of the extensive application documents, public comments, and the statement made concerning Zoning Board members not visiting the property, attorney Gilchrist suggested several matters be confirmed on the record: that the Building Department confirm the complete written record on this Smith area variance application to date, and ensure that each Zoning Board member has a complete copy of the entire record; that each Zoning Board member review that written record and visit the Smith property to view the premises; that the Zoning Board then proceed with deliberations at the

Zoning Board's March meeting, and that the Zoning Board should consider preparing a written decision which could be reviewed at the Zoning Board's April meeting. Attorney Gilchrist stated that this time frame would comply with the 62-day requirement for rendering a determination on the Smith area variance application. Attorney Gilchrist also stated that the issue of surface water runoff had been extensively commented upon on this application, and that the Zoning Board members should devote attention to this issue given that the Zoning Board must determine whether the variance requested will result in any detriment to adjacent and nearby properties. Attorney Gilchrist also stated that the Zoning Board members should consider the information concerning surface water runoff when visiting the Smith property. Attorney Gilchrist noted that the current application record includes comments and photographs from the adjacent property owner, comments and photographs submitted by Smith, as well as a Building Department inspection of the property. Attorney Gilchrist requested that the Zoning Board members look at all of this information concerning surface water runoff. Attorney Gilchrist also informed the Zoning Board that the Brunswick Code did provide the opportunity for the Zoning Board members to retain a professional consultant to assist them in reviewing the surface water runoff issue, if deemed necessary by the Zoning Board members. Chairman Steinbach stated that he felt it appropriate for the Zoning Board members to review the information on surface water runoff submitted to date, and allow the Zoning Board members the opportunity to visit the property before any determination is made to retain an expert consultant on the surface water runoff issue. Member Clemente wanted to correct the record on one point, stating that she had in fact visited the Smith property even though Brazee had commented that no member of the Zoning Board had gone to the Smith property. Member Schmidt also stated that he had in fact visited the property as well. Both Member Clemente and Member Schmidt stated that they would visit the property again, as did the

other Zoning Board members. This matter is adjourned for further deliberation at the March 21 meeting.

The next item of business on the agenda was the area variance application submitted by Resier Builders Inc. for property located at 3 Brook Hill Road. Henry Reiser of Reiser Builders Inc. was present. Chairman Steinbach inquired whether there was any new or additional information on the application. Mr. Reiser stated there was no change to the application. The Zoning Board opened a public hearing on the area variance application, and the notice of public hearing was read into the record, noting that the notice was published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. Mr. Reiser did note for the record that his daughter owned the adjacent residential lot in the Brook Hill subdivision, lot #2, and that while she was unable to attend the meeting, she had no objection to the approval of the area variance, and would submit a letter to that effect if necessary. Member Shover inquired whether there was any survey prepared for the lot and how the placement of the foundation and home had occurred. Mr. Reiser simply confirmed that there was a mistake in the field concerning the survey, which led to the request for the area variance from the right side setback. There were no additional comments. Chairman Steinbach asked for a motion to close the public hearing. Member Clemente made a motion to close the public hearing on the Reiser Builders Inc. area variance application, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing on the area variance application by Reiser Builders was closed. Attorney Gilchrist then reviewed the legal standards for consideration of the area variance, and also noted that this application did require a determination of environmental significance under SEQRA. Member Clemente commented that she did not feel there was the

potential for any significant adverse environmental impact concerning the limited variance sought in connection with the house location on this lot, and therefore made a motion to adopt a negative declaration under SEQRA. That motion was seconded by Chairman Steinbach. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, the Zoning Board members determined that in connection with the requested right side setback variance from the required 25 feet to a total of 21 feet 6 inches, an undesirable change in the character of the neighborhood would not be created; there would be no detriment to nearby properties, noting that the owner of the adjacent lot did not object to the variance approval and final house location; that given the limited nature of the variance sought, requiring the relocation of the house on this lot was not deemed necessary nor feasible; that the requested variance was not substantial; that the requested variance would not have an adverse effect on the physical or environmental conditions in the neighborhood; and while this difficulty requiring the area variance was self-created, this point was relevant but does not preclude the approval of the area variance. In light of these factors, and based upon the application documents and deliberations, Member Schmidt made a motion to grant the area variance, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the area variance granted on the application by Reiser Builders Inc. with respect to 3 Brook Hill Road.

The next item of business on the agenda was the sign variance request submitted by PF Management Group LLC for property located at 668 Hoosick Road. The applicant is proposing the demolition of two existing structures at this location, and the construction of a new Aldi grocery store and Taco Bell restaurant. Chris Kamar, P.E. of APD Engineering, was present for the applicant. Mr. Kamar reviewed the procedural history of this application. This application to the Zoning Board included variance requests with respect to parking space size, total parking space

count, as well as requested sign variances. The public hearing had been held by the Zoning Board concerning all variance requests. The public hearing had been closed, and the Zoning Board had previously acted on the parking space variances, granting the variances both with respect to parking space size and total parking space count. The applicant had consented to adjournment of the determination of the sign variance request pending action by the Brunswick Planning Board on the underlying site plan for the project. Mr. Kamar stated that the Brunswick Planning Board had granted conditional final site plan approval at its meeting held February 18, 2016. The applicant is now requesting the Zoning Board to proceed with its deliberations and determination on the sign variance requests. The applicant is seeking variances for signage both with respect to a freestanding pylon sign and the building-mounted signs. With respect to the pylon sign, the applicant is seeking a variance for total sign size, as well as setback of the pylon sign from the Hoosick Road corridor. With respect to size of the sign, the Brunswick Town Code allows a total of 70 square feet per sign, with 35 square feet per side. Mr. Kamar reviewed the proposed pylon sign, which the applicant is proposing to include two signs, one for the Aldi grocery store and one for the Taco Bell restaurant. Mr. Kamar provided elevations of the proposed signs, which are proposed to be 108 square feet per side total for both the Aldi sign and Taco Bell sign. The applicant is proposing a sign to be approximately 27 feet high, which would require a setback of 27 feet from the Hoosick Road corridor, and the applicant is seeking a 15 foot setback from the Hoosick Road corridor. Mr. Kamar reviewed the proximity of the proposed sign in relation to the existing Planet Fitness sign. Regarding building-mounted signs, Mr. Kamar confirmed that the Town Code allowed two building-mounted signs per building, and the applicant is proposing a total of three building-mounted signs for the Taco Bell restaurant, and a total of four building-mounted signs for the Aldi grocery store. Mr. Kamar showed elevations of the buildings with

the proposed building-mounted signs. On the Taco Bell restaurant, Mr. Kamar reviewed the proposed sign, which includes both the Taco Bell letters and the bell logo, stating that the letters and symbol are combined in one sign. Mr. Kamar also reviewed the proposed building-mounted signs for the Aldi grocery store, which include separate lettering as well as separate logos, totaling four building-mounted signs. The Zoning Board members reviewed the proposed sign elevations. Member Clemente inquired how the dimensions on the pylon signs were reached. Mr. Kamar stated that the Aldi sign was the standard size for the Aldi grocery store chain, and that the Taco Bell sign was sized so that it would be consistent with the size of the Aldi sign. Member Clemente suggested that the Taco Bell sign should be reduced. Chairman Steinbach felt that the total area of the pylon sign was too large, and the other members of the Zoning Board agreed. Chairman Steinbach understood the proposed size of the Aldi sign, given that the Aldi building is approximately 500 feet off the Hoosick Road corridor, but questioned the size of the Taco Bell sign given that the Taco Bell restaurant would be adjacent to the Hoosick Road corridor. Mr. Kamar was agreeable to reducing the size of the Taco Bell sign. The Zoning Board members also suggested that the height of the proposed pylon sign be reduced as well. Upon further deliberation, the Zoning Board members concluded that the pylon sign should be no higher than 25 feet, and that the size of the Taco Bell sign should be reduced so that the total square footage per side for the two signs combined was to be no larger than a total of 88 square feet. The Zoning Board members also concluded that the pylon sign should be located as far off the Hoosick Road corridor as possible without impairing the proposed parking spaces and travel lanes, and that the pylon sign could be located 18 feet off the Hoosick Road corridor. Mr. Kamar and the Zoning Board members discussed these dimensions and location, and Mr. Kamar was agreeable to reducing the height and size of the pylon sign, and also increasing the setback of the pylon sign

from the Hoosick Road corridor. In terms of the building-mounted signs, the Zoning Board members did agree that the building-mounted sign for the Taco Bell restaurant, which includes the lettering and bell symbol, constituted one sign, and that a total of three signs is being proposed for the Taco Bell building. Regarding the Aldi grocery store, the Zoning Board members determined that the distance between the Aldi logo and the lettering required the building-mounted signs to be considered a total of four signs for the Aldi grocery store. The Zoning Board members generally concluded that a total of four signs on the Aldi grocery store was not excessive given the 500 foot distance of the store building from the Hoosick Road corridor. Following such extended discussion and deliberations, the Zoning Board members determined they were ready to proceed with action on the sign variance requests. Attorney Gilchrist stated that a determination of environmental significance under SEQRA with respect to the requested sign variances should be made, with particular regard to potential significant adverse aesthetic impacts. Member Schmidt stated that he did not consider the sign variances to result in any significant adverse environmental effect, including any negative aesthetic effect, considering the nature of the commercial corridor along Hoosick Road. Member Clemente also commented that with reduction of the height and size of the proposed pylon sign, she did not feel there was the potential for any significant adverse environmental impact. Thereupon, Chairman Steinbach made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Clemente. The motion was unanimously approved, and a SEQRA negative declaration adopted. On the sign variance request for the building-mounted signs on the Taco Bell restaurant, Member Sclafani made a motion to approve the requested variance to allow a total of three building-mounted signs on the Taco Bell restaurant, with consideration that each sign included the lettering and bell logo. Member Schmidt seconded the motion. The motion was unanimously approved, and the variance for the building-

mounted signs for the Taco Bell restaurant was approved. On the variance request for the total number of building-mounted signs for the Aldi grocery store, Chairman Steinbach made a motion to approve a total of four building-mounted signs for the Aldi grocery store, noting that the Aldi logo and the lettering constituted separate signage. Member Shover seconded the motion. The motion was unanimously approved, and the variance request allowing a total of four building-mounted signs for the Aldi grocery store was granted. On the variance requests associated with the proposed pylon sign, Member Clemente inquired whether the pylon sign would be lit. Mr. Kamar stated that the sign would be internally lit. Chairman Steinbach did not feel this was a significant issue, given the fact that several other signs along the Hoosick Road corridor were similarly lit 24/7. Mr. Kamar stated that the building-mounted signs for the Aldi store generally are extinguished an hour after closing, and that the Aldi grocery store was proposed to close at 8pm. Mr. Kamar stated that the Taco Bell restaurant is open until 2am, principally for drive-thru service, and that the building-mounted signs would remain lit while the restaurant was open. Regarding the pylon sign, Mr. Kamar stated that the pylon sign would remain lit after the grocery store and Taco Bell closed. The Zoning Board members did not feel this was a significant issue, noting that other signage remained lit along the Hoosick Road corridor. Upon further deliberation, Chairman Steinbach made a motion to approve the sign variance request with respect to the pylon sign, subject to the following conditions:

1. The pylon sign maximum height is 25 feet;
2. The size of the proposed Aldi pylon sign was acceptable, but the proposed Taco Bell pylon sign must be reduced in size, with a total square footage per side for the two signs combined to be no larger than a total of 88 square feet;
3. A minimum setback of 18 feet for the pylon sign from the Hoosick Road right-of-way line.

Member Shover seconded the motion subject to the stated conditions. The motion was unanimously approved, and the sign variance request for the pylon sign was approved subject to the stated conditions.

Two items of new business were discussed.

A use variance application has been submitted by Michael J. Butler, Jr. for property located at 961 Hoosick Road. Mr. Butler was present. Mr. Butler explained that he was seeking to purchase this property, which was previously used as a dental office by Dr. Weinberger, and was located at the intersection of Hoosick Road and Crescent Lane. Mr. Butler stated that the Brunswick Zoning Board of Appeals had previously issued a use variance for this property, but indicated that the use was for a dentist office. Mr. Butler is seeking to use the property as an insurance office, and seeks a modification of the use variance to allow a professional office at this location rather than a limited use as a dentist office. Member Clemente asked whether there were any structural or exterior changes proposed. Mr. Butler stated there were no structural or exterior changes proposed, except for a new sign. Mr. Butler stated that there were nine existing parking spaces, which would be adequate for his proposed insurance office use. Mr. Butler stated that there would only be minor interior renovations. Attorney Gilchrist noted the previous action by the Zoning Board granting the use variance for this location to be used as a dentist office, and requested that the Building Department provide a copy of that Zoning Board record to the Zoning Board members to review in connection with the current application to amend the use variance. The Zoning Board members determined that the application was complete and ready for public hearing. The public hearing is scheduled for March 21, 2016 to commence at 6:00pm.

The second item of new business discussed was a special use permit application submitted by Ken and Joann Nitz for property located at 53 Plank Road. Ken Nitz was present. Mr. Nitz

stated that he had previously constructed an in-law apartment above the garage, had obtained the necessary permits from the Town of Brunswick for that construction and use, but that the Town Building Department had no records concerning the in-law apartment. Mr. Nitz stated that he is seeking to confirm the Town's records on the use of the property, including the use of space above the garage as an in-law apartment, and issuance of final certificates of occupancy for this location. Mr. Nitz stated that the residence was a total of 3,600 square feet, including the current in-law apartment. Mr. Nitz also stated that the Town had assessed the property to include an in-law apartment. The Zoning Board determined that the application was complete for purposes of scheduling a public hearing. This matter is scheduled for public hearing on March 21, 2016 to commence at 6:15pm.

The index for the February 22, 2016 meeting is as follows:

1. Smith - Area variance - 3/21/2016.
2. Reiser Builders Inc. - Area variance - granted.
3. PF Management Group LLC - sign variances - granted subject to conditions.
4. Butler - Use variance - 3/21/2016 (public hearing to commence at 6:00pm).
5. Nitz - Special use permit - 3/21/2016 (public hearing to commence at 6:15pm).

The proposed agenda for the March 21, 2016 meeting currently is as follows:

1. Butler - Use variance (public hearing to commence at 6:00pm).
2. Nitz - Special use permit (public hearing to commence at 6:15pm).
3. Smith - Area variance.

Zoning Board of Appeals

TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD MARCH 21, 2016

PRESENT were CHAIRMAN MARTIN STEINBACH, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The draft minutes of the February 22, 2016 meeting were reviewed. Member Clemente had one correction, at page 7, line 3, first word is changed from “are” to “and”. Subject to that one correction, Member Clemente made a motion to approve the February 22, 2016 minutes as corrected, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the minutes of the February 22, 2016 meeting were approved as corrected.

The first item of business on the agenda was the application to amend an existing use variance submitted by Michael J. Butler, Jr. for property located at 961 Hoosick Road. Mr. Butler was present. Chairman Steinbach asked whether there were any changes or additions to the application materials. Mr. Butler stated that there were no changes, and reiterated that he was seeking an amendment to an existing use variance for this property, to allow the use of the property for general business/professional use rather than limited to a dentist office use. The Zoning Board opened a public hearing on the application. The Notice of Public Hearing was read into the record, noting that the notice had been published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. No members of the public wished to provide any

comment on the application. Chairman Steinbach asked Mr. Butler whether the property had been used in any way since the dental office closed. Mr. Butler stated that to his knowledge, the property had not been used since the dentist office closed. Chairman Steinbach stated that he felt there was ample parking at this location for the prior use as a dentist office, and thought that there would be ample parking for use as an insurance office. Chairman Steinbach also wanted to confirm that Mr. Butler did not propose any changes to the exterior of the premises. Mr. Butler stated that no changes to the exterior premises are proposed. Chairman Steinbach also wanted to confirm that a sign would be installed that was similar in size to the prior dentist office sign. Mr. Butler stated that the sign would be similar to the prior sign used for the dentist office. Member Sclafani stated that she felt there would be less parking required for use of the property as an insurance office than was required for use of the property as a dentist office. Member Clemente noted that there was already a handicapped access ramp to the building, and also noted that the primary entrance to the parking area is actually off Crescent Lane, rather than Hoosick Road, and this provided a safe means of ingress and egress to the parking lot for this property. A neighboring property owner who was present at the meeting stated that she was simply interested in what was being proposed, and did not have any objection to the use of the property as an insurance office. Chairman Steinbach inquired whether there were any further questions or comments from the Zoning Board members. Hearing none, Member Clemente made a motion to close the public hearing, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. Thereupon, the Zoning Board members determined to proceed to deliberate on the application. Attorney Gilchrist stated that the first issue for the Zoning Board to address was a determination of environmental significance under the State Environmental Quality Review Act, and reviewed the standards for making the determination of environmental significance. Chairman

Steinbach stated that in his opinion, the premises was already used for a professional-type office, and since no exterior changes were being proposed, there would not be the potential for any significant adverse environmental impact from the proposed amendment to the existing use variance. Member Schmidt concurred, noting that there were no changes at all to the exterior of the premises or to the property itself. The Zoning Board members generally concurred in that opinion. Member Schmidt then made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Clemente. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board proceeded to deliberate on the proposed amendment to the existing use variance. Attorney Gilchrist noted that the Zoning Board did have the authority to consider imposing appropriate conditions, and noted that the Zoning Board of Appeals had conditioned its prior use variance for this location to use of the property as a dentist office. In this case, attorney Gilchrist stated that the Zoning Board could consider conditioning the amendment to the use variance to allow use of the premises as an insurance office, rather than the general business/professional category. Member Schmidt stated that he agreed with that condition, since the use of the premises as an insurance office is an important consideration with respect to potential traffic and parking issues. Member Schmidt stated that with the proposed use of the premises limited to an insurance business, the proposed use did provide for adequate parking spaces to handle expected public attendance, and did not cause any undue traffic congestion or create a traffic hazard. Member Clemente agreed that adequate parking is provided currently on the premises for use of the building as an insurance agency. Member Sclafani commented that with the primary entrance off of Crescent Lane rather than Hoosick Road, there is no significant potential for undue traffic congestion or creation of any traffic hazard. The Zoning Board members generally concurred that given the use of this premises as a dentist office for the

past several years, the proposed change to an insurance office would have adequate water supply, have adequate and available fire and police protection, adequate waste disposal, and adequate access to appropriate transportation facilities. Chairman Steinbach also noted that in the absence of any proposed changes to the exterior of the premises, the change in use to an insurance office will not create any negative effect on existing neighborhood character or impact surrounding properties. The Zoning Board members concurred in that comment. Chairman Steinbach stated that he was in favor of conditioning the amendment to the existing use variance to limit the use for an insurance office, and not for a general business/professional use. Chairman Steinbach also stated that the applicant would need to coordinate with the Brunswick Building Department on any sign replacement at the premises. Based on such deliberation, Member Schmidt made a motion to approve the amendment to the existing use variance to allow the use of the premises for an insurance office business, with no exterior alterations or renovations permitted, which motion was seconded by Member Clemente. The motion was unanimously approved, and the amendment to the existing use variance granted, to allow use of the premises as an insurance office.

The next item of business on the agenda was the special use permit application submitted by Ken and Joann Nitz for property located at 53 Plank Road. The applicants seek approval for an in-law apartment over an existing garage. Ken and Joann Nitz were present on the application. Chairman Steinbach inquired whether there were any changes or additions to the application. Mr. Nitz stated there were no changes or additions, and that the special use permit application was submitted because the Town was not able to locate its records concerning any building plans, certificate of occupancy, or special use permit for this use, but Mr. Nitz maintains that the Town had previously granted all of these approvals. The Zoning Board of Appeals opened a public hearing on the application. The Notice of Public Hearing was read into the record, noting that the

notice was published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent properties. Chairman Steinbach then opened the floor for receipt of public comment. Mr. and Mrs. Rohling, 57 Plank Road, stated that they were the owners of the property next door to the Nitz property, that each of the lots was in excess of two acres, that there was plenty of room for parking on the Nitz premises for cars in connection with the in-law apartment, and that the Rohling residence was the closest to the garage structure which houses the in-law apartment, and that they had no objection to granting the special use permit for the in-law apartment. There were no other members of the public present wishing to provide public comment. However, Chairman Steinbach noted that two written correspondences had been received by the Zoning Board Appeals concerning this application, and read each letter into the record. The first letter was submitted by Joseph R. Goyette, III (undated, received by the Town on March 21, 2016), and the second letter was from William J. and Catherine P. Burns, dated March 14, 2016 (received by the Town on March 15, 2016). Mr. Goyette lists his residence at 49 Plank Road, and William and Catherine Burns list their property at 45 Plank Road. Both of these letters were read into the record in full. There were no further public comments on the application. Member Schmidt asked whether there was anyone living in the apartment at the present time. Mr. Nitz stated he did have a tenant. Member Schmidt asked if the tenant was a relative. Mr. Nitz stated that the tenant was his niece. Attorney Gilchrist stated that in light of the written comments received by the Zoning Board on this application, which have raised issues concerning the number of tenants and whether such tenants were related to the owners of the premises, and that these comment letters also raised the issue of the adequacy of the septic system at the Nitz property to handle additional waste water from an apartment, that the public hearing remain open and the Zoning Board afford the applicant an opportunity to respond to these comments in writing on the

record. Member Schmidt concurred in that opinion, and made a motion to keep the public hearing open pending receipt of a written response from the applicant to the comments contained in the written letters submitted to the Zoning Board on this application. That motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing on this application will remain open. Member Sclafani asked what the definition of an “in-law” apartment is. Attorney Gilchrist stated that he would provide legal guidance to the Zoning Board on this issue prior to the next meeting. Mr. Nitz commented that he felt an “in-law” apartment should be limited to family members only. Member Clemente asked whether the apartment had access only from the principal residence or did it have a separate secondary access. Mr. Nitz stated that the apartment only had a separate secondary access, and did not have access directly from the principal residence. Member Clemente asked whether the apartment had separate heating. Mr. Nitz stated that the apartment did have its own thermostat, but did not have a separate meter. Member Schmidt asked the applicant to list the number of tenants that have been in this apartment since it was constructed several years ago. Mr. Nitz stated that there have only been three tenants. Mr. Nitz also stated that the septic system for the premises had been designed to handle waste water from seven individuals, and felt that the septic system was adequate to handle waste water from the apartment. Member Shover stated that one of the written comments indicated the Nitz lot, as well as neighboring lots, were created through a 1996 subdivision. Mr. Nitz did confirm that these were new lots created from a subdivision. Member Shover stated that he would like to see the approved subdivision plat filed in the County Clerk’s office, and have the opportunity to review any plat notes which may be on that plat. Member Shover noted that one of the comments in the letters stated that the subdivision was conditioned on single-family homes only, and would like to see if that was a restriction imposed on the subdivision. Attorney Gilchrist suggested that the applicants

be provided copies of the written letters submitted during the public hearing, and afford the applicant an opportunity to respond in writing to the comments raised. The Zoning Board members concurred, and directed Mr. Nitz to submit written responses to the comments raised in the comment letters. The Zoning Board also required Mr. Nitz to provide information concerning the septic system installed on the premises, and have that information submitted before the next meeting. Mr. Nitz stated that he was not sure he had information on his septic system. The Zoning Board stated that the septic system information should be on file in the Rensselaer County Health Department. Attorney Gilchrist also stated that the Building Department should review the Planning Board minutes for the mid-1990's timeframe to review the deliberation and any approval conditions concerning the subdivision creating the property now owned by Nitz. Mr. Nitz again reiterated that the Town had already approved the apartment area over the garage and had already issued a special permit for that use back in 2004. Attorney Gilchrist stated that the Brunswick Building Department should likewise review the minutes of the Zoning Board for 2004 to determine whether Nitz had filed any application for special use permit, and if so, what action the Zoning Board took on that application. The public hearing on this application remains open, and this matter is adjourned to the April 18 agenda.

The next item of business on the agenda was the area variance application submitted by Daniel Smith for property located at 899 Hoosick Road. Daniel Smith was present. Chairman Steinbach requested that Mr. Smith provide any additional information on these area variance requests. Mr. Smith stated that with respect to any issue concerning any encroachment of any portion of the garage structure, including roof encroachment or any encroachment by concrete slab or building structure, he would remove them from the adjacent property owned by Brazee, so that all structures and portions of structures subject to this application will be located on the Smith lot.

Mr. Smith reiterated that the area variance applications pending were with respect to side yard setback, which will not include any encroachment as he will remove any encroachment existing on the Brazee lot, and also a height variance and variance for percentage of lot coverage by a private garage. Member Sclafani asked about the Brunswick Code provision concerning additions to a nonconforming structure, and that if Mr. Smith had followed the same building line, whether he would need a side yard variance or not. Attorney Gilchrist reviewed the provision of the Brunswick Zoning Ordinance, at §5(4), which provides that additions to nonconforming structures may be made along the same building line. Attorney Gilchrist stated that the record in this matter does confirm that the original detached garage on the Smith lot is a nonconforming structure, but the nonconforming structure was not located parallel to the side yard line, and when the addition was constructed, the resulting constructed addition is closer to the side yard lot line than the original nonconforming structure, and the surveys on record in this matter also disclose an encroachment onto the Brazee lot. The Zoning Board members generally reviewed the record concerning the original garage structure, its size, and the two additions which have been made by Mr. Smith, including an enclosed addition to the rear of the original nonconforming structure, plus an additional concrete slab with a roof which is located to the rear of the completed addition. Next, the Zoning Board members did confirm that they had visited the Smith lot. Member Sclafani stated she had visited the property on February 15, having reviewed the application materials and spent time on the property. Member Sclafani noted that an existing gutter system along the roof line of the garage structure does bring the runoff from the roof of the garage to the opposite side of the Smith lot from the Brazee lot, and that if any encroachment was removed or any change to the garage structure was made by Mr. Smith, this roof gutter system would need to be reinstalled and continued to divert the roof runoff to the opposite side of the Smith lot from the Brazee lot.

Member Clemente stated she had visited the property on February 25 at 2:43 p.m., and that Mr. Smith was present. Member Schmidt stated that he visited the property on March 8 at 1:00 p.m. Chairman Steinbach stated he visited the property on February 26 at 2:00 p.m., after 2–3 days when it had been raining. On the day Chairman Steinbach was at the property, he did not see any ponding or other surface water on the Brazee lot. Some of the Zoning Board members had taken photographs during their site visit, and attorney Gilchrist stated that these photographs should be produced and included in the record of this matter for consideration. Attorney Gilchrist then reminded the Zoning Board members that at the February meeting of the Zoning Board, the option of retaining a technical consultant was discussed, and specifically to assist the Zoning Board members in making factual determinations as to whether any of the requested variances would result in a detriment to off-site properties, with particular regard to the issue of surface water runoff from the Smith lot onto the Brazee lot. Following the site visits conducted by the Zoning Board members, attorney Gilchrist reiterated that the Brunswick Town Code did allow the Zoning Board members to retain technical assistance in connection with the review of these variance applications. Attorney Gilchrist noted that the Town of Brunswick does not employ an engineer for the Zoning Board, and the Town Code does permit the Zoning Board to retain an expert to assist the Zoning Board in making any determinations necessary on the variance application, and in this case, the issue regarding surface water runoff does raise an issue that the Zoning Board members may desire expert assistance on in order to determine whether any of these variance requests will result in an adverse impact or detriment to off-site properties. The Zoning Board members generally discussed the option of retaining a technical consultant, noting that the Town does not employ an engineer on staff. It was noted that the cost of the technical consultant would be the responsibility of the applicant. Attorney Gilchrist then inquired with the Brunswick

Building Department as to whether these variance applications had been referred to the Rensselaer County Department of Economic Development and Planning for recommendation. It appears on the record that these variance applications had not been referred to the County Planning Department. Attorney Gilchrist advised the board that pursuant to the New York Town Law, and given that the property at issue is within 500 feet of a state highway, the variance applications are required to be referred to the County Planning Department, and that such referral is required to be completed at least five days prior to the public hearing. Attorney Gilchrist stated that the Zoning Board had already closed the public hearing in this matter, apparently without having referred the variance applications to the County Planning Department. Attorney Gilchrist further stated that the Zoning Board has the inherent authority to reopen the public hearing, and stated that the Zoning Board should consider reopening the public hearing to address this procedural issue on this record. Attorney Gilchrist stated that in the event the Zoning Board reopened the public hearing for its April meeting, the variance applications should immediately be referred to the County Planning Agency for recommendation. The Zoning Board discussed this issue, and determined to reopen the public hearing to address this issue of procedure on this record. Thereupon, Member Schmidt made a motion to reopen the public hearing on the Smith area variance applications for its April 18 meeting at 6:30pm, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing on the Smith area variance applications will be reopened at the April 18 meeting. Chairman Steinbach did recognize one member of the public who wished to speak to the Zoning Board on this matter. Dawn Vandewalker, the daughter of William and Margaretha Brazee, stated that the original building permit application for the first addition to this garage was issued in 2010, and asked why a variance was not required at that time; that her information is that no building permit was ever issued for the concrete slab to the rear of

the addition or for the roof over that concrete slab; and that she has raised a concern regarding a structural issue on the entire addition to the garage which should be investigated by the Building Department. Ms. Vandewalker also stated that William Brazee will allow access to his property by the Building Department and the Zoning Board members in conjunction with this Smith application, and to the extent the Zoning Board members had interpreted any earlier statement that William Brazee would not allow access to the property, Mr. Brazee never intended to say that and certainly no offense was meant. The Zoning Board members then further discussed the option of retaining a technical consultant to assist them in their fact findings in this matter. The Zoning Board members confirmed that the Town does not have a professional engineer on staff, and further found that a professional engineer should review the application information and conduct a site inspection on the issue of surface water runoff and drainage, which will then assist the Zoning Board members in making their fact findings and determination as to whether the variance requests would result in an adverse impact or detriment to off-site properties. Member Clemente then made a motion for the Zoning Board to retain an engineering firm in this matter to assess surface water runoff and drainage issues, which motion was seconded by Member Schmidt. The motion was unanimously approved. The Zoning Board discussed the fact that it had previously retained professional engineering services from Laberge Engineering, and determined that Laberge Engineering should be consulted in this matter. The Building Department will prepare a complete copy of the application materials, and forward that information to Laberge Engineering to obtain an estimate for professional engineering consultation, and all fees associated with the engineering services will be the responsibility of the applicant. This matter is placed on the April 18, 2016 agenda at 6:30pm for the purposes of reopening the public hearing on the Smith area variance applications.

Three items of new business were discussed.

The first item of new business discussed was a sign variance application submitted by Site Enhancement Services, for the new Advanced Auto project located at 616 Hoosick Road. Ryan Kubacki and Brent Forte of Site Enhancement Services were present. The application was reviewed, which seeks approval for a 75 square foot pylon sign, where Town Code allows for a 35 square foot pylon sign. The Zoning Board members reviewed the application materials, and found them to be complete to move this matter forward to public hearing. A public hearing is scheduled for the April 18 meeting to commence at 7:00pm.

The second item of new business discussed was an area variance application submitted by Robert Button for property located at 318 Carrolls Grove Road. Mr. Button seeks approval to install a 10-foot by 24-foot shed for garden storage, and seeks a side yard setback variance and rear yard setback variance. The Zoning Board members reviewed the application materials, and requested that Mr. Button provide a plot plan showing the location of the proposed shed on his lot. Mr. Button had a plot plan with him, and handed a copy of that plot plan to the Zoning Board members and reviewed the plot plan with the Zoning Board members. The Zoning Board members determined that the application materials were complete to move this matter forward to public hearing. A public hearing is scheduled for the April 18, 2016 meeting to commence at 7:15pm.

The third item of new business discussed was an area variance application submitted by Jim and Kim Wilson for property located at 3 Arminghall Drive. Jim Wilson was present. He explained that an area variance was being sought to install a 10-foot by 20-foot shed, which will be used for storage only. Mr. Wilson reviewed the plot plan showing the layout of his corner lot, the proposed location of the shed, as well as other areas of the lot which have a significant amount of drainage and wet areas which would make a shed placement difficult. The Zoning Board

members determined the application materials were complete to move the matter forward to public hearing. A public hearing is scheduled for the April 18, 2016 meeting, to commence at 7:30pm.

The index for the March 21, 2016 meeting is as follows:

1. Butler - Amendment to use variance - granted with condition
2. Nitz - Special use permit - April 18, 2016 (public hearing to continue)
3. Smith - Area variances - April 18, 2016 (public hearing to reopen at 6:30pm)
4. Site Enhancement Services - Sign variance - April 18, 2016 (public hearing to commence at 7:00pm)
5. Button - Area variance - April 18, 2016 (public hearing to commence at 7:15pm)
6. Wilson - Area variance - April 18, 2016 (public hearing to commence at 7:30pm).

The proposed agenda for the April 18, 2016 meeting currently is as follows:

1. Nitz - Special use permit (public hearing to continue)
2. Smith - Area variances (public hearing to reopen at 6:30pm)
3. Site Enhancement Services - Sign variance (public hearing to commence at 7:00pm)
4. Button - Area variance (public hearing to commence at 7:15pm)
5. Wilson - Area variance (public hearing ton commence at 7:30pm)

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD APRIL 18, 2016

PRESENT were CHAIRMAN MARTIN STEINBACH, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the March 21, 2016 meeting. Upon motion of Member Clemente, seconded by Member Sclafani, the minutes of the March 21, 2016 meeting were unanimously approved without amendment.

The first item of business on the agenda was the special use permit application submitted by Ken and Joann Nitz for property located at 53 Plank Road. The applicants seek approval of a special use permit to allow the premises to be used as a multi-family dwelling, and specifically for use as an in-law apartment. Chairman Steinbach stated that the Zoning Board had requested additional submittals from the applicant, including a written response to the public comments received at the public hearing as well as information concerning the on-site septic system from the Rensselaer County Health Department. Mr. Nitz stated that he had prepared a written response to the public comments, and also had information on the on-site septic system, but that he only had one copy of these documents. Mr. Nitz also had a copy of the approved subdivision plat for the subdivision in which his lot was approved, stating that his lot is identified as lot #2 on the subdivision plat, and that his lot is 1.88 acres. Mr. Nitz also reviewed as-built drawings of the septic system on his lot, and also reviewed information on the design of the septic system as well

as Rensselaer County Department of Health inspections. Chairman Steinbach first stated that he anticipated this information to have been provided before the Zoning Board meeting, and that each member of the Zoning Board needs to be provided a copy of the information. Chairman Steinbach stated he was particularly interested in knowing if the Rensselaer County Health Department had approved the septic system for use as a multi-family dwelling, and specifically for an in-law apartment. Mr. Nitz stated that the septic system design was adequate for including the in-law apartment. Member Sclafani stated she had visited the property, and noted that there was a front door for the main house, and what appeared to be a back stairway for the apartment located above the garage. Mr. Nitz stated that was correct, and that there was a separate entrance for the apartment. Member Sclafani asked whether there was a definition of an in-law apartment in the Brunswick Code. Mr. Nitz offered a generic definition from the internet. Mr. Nitz stated that the in-law apartment was not in use at all times, and was only used when needed for family members. Mr. Nitz also stated that the subdivision approval creating his lot did not restrict the property at all from use as apartment, and he further stated that he could develop his lot for multiple apartments. Member Clemente then asked several questions concerning what was actually built over the garage, whether it was consistent with plans prepared by Nitz when applying for a building permit, and whether the plans for the building permit included an in-law apartment. Mr. Nitz stated that the construction plans should have been on file at the Town, and that he does not have drawings available. Mr. Nitz did state he had as-built drawings showing the in-law apartment. Mr. Nitz did state that the plans submitted for the building permit application did include an in-law apartment. There was discussion whether the building plans identified the room as a “future bonus room” or as an in-law apartment, and that a separate kitchen area was included in the plans. Mr. Nitz stated that the Building Department had all of his plans, including the proposed apartment area.

Chairman Steinbach stated that he wants Mr. Nitz to make copies for each Zoning Board member of all of the plans and other written submittals discussed at this meeting, and have those copies provided to each Zoning Board member in advance of the May meeting. Chairman Steinbach requested that the Zoning Board members review this additional information before the May meeting, and stated that this matter will be placed on the May meeting agenda for further deliberation. Attorney Gilchrist advised the Board that the Brunswick Code does not provide for a separate definition of in-law apartment, and that this matter should be considered a two-family, or “multiple-dwelling” under the Brunswick Zoning Ordinance. The Zoning Board members determined to close the public hearing on the Nitz special use permit application. Member Clemente made a motion to close the public hearing, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed. Chairman Steinbach reiterated that Mr. Nitz needs to provide copies of all of the plans and other documents reviewed at this meeting to all of the Zoning Board members, and that this matter is placed on the May 16, 2016 meeting agenda for further deliberation.

The second item of business on the agenda was the area variance application submitted by Daniel Smith for property located at 899 Hoosick Road. Mr. Smith was in attendance. The Zoning Board reopened the public hearing on this variance application. The notice of public hearing was read, and that notice having been published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent properties. Chairman Steinbach noted that Laberge Engineers, which has been retained by the Zoning Board as consultant on this application, was not able to complete its work in this matter by this meeting, and will complete its work and provide its opinions to the Zoning Board for the May meeting. Chairman Steinbach noted that the public hearing on this application has been reopened, and opened the floor for receipt

of public comment. Dawn Vandewalker, Kingsbury, and daughter of William and Margaretha Brazee, handed up to the Zoning Board an additional comment letter, consisting of three pages, with an attachment including a schematic of the Smith garage structure, two pages of photographs (a total of six photographs), and information concerning mold on fruit trees. Ms. Vandewalker reviewed the written submission with the Zoning Board members. Ms. Vandewalker noted that the photocopies of the photographs are not as clear as the originals, but did show the Zoning Board members the original photographs included in the attachment to her written comments. Daniel Smith, the applicant, responded that he had purchased his property 15 years ago, that he did obtain a building permit for Reiser Brothers to construct the addition to the garage, that he will address and correct any encroachment resulting from the garage addition, that he had applied for a special use permit to use his property as a dental office several years ago and had complied with all stipulations on that special use permit approval, that there has never been a surface water problem at the property since complying with the stipulations on the special use permit unless the gutter that had been installed on the garage structure was tampered with, that he has had disagreements with Mr. Brazee which have involved complaints to the New York State Police, that there are ongoing disputes between Mr. Smith and Mr. Brazee that have continued to involve the New York State Police, that he is not selling his house at 899 Hoosick Road and has no plans to do so, disputed several of the factual statements made by Ms. Vandewalker, and concluded that there is no surface water problem at this property if the gutters he has installed are not tampered with, and that he wants to make the situation right with the Town of Brunswick. Ms. Vandewalker responded that Mr. Smith is listing his property for sale on Craigslist. Chairman Steinbach stated that the Zoning Board will consider only statements and information relevant to the area variance applications under consideration. The Zoning Board members determined to keep the public hearing open, in

light of the fact that Laberge Engineering has not completed their work or provided any report to the Zoning Board. Hyde Clark, Esq., attorney for Brazee, stated it his client's request that the public hearing be held open. The Zoning Board members determined to keep the public hearing open, and the public hearing will be continued at the May 16, 2016 meeting at 6:15pm. Brazee stated that they consented to Laberge Engineering going onto their property when doing the site work on this project, and requested that they be provided the date and time when Laberge will be onsite. Attorney Gilchrist stated that he would coordinate with Laberge Engineering and provide that information to Brazee.

The next item of business on the agenda was the sign variance application submitted by Site Enhancement Services, by Ryan Kubacki, for property located at 616 Hoosick Road. Ryan Kubacki of Site Enhancement Services was present. Mr. Kubacki handed up to the Board a six page submittal, providing further information on the site layout as well as proposed signage for this location. Mr. Kubacki stated that Site Enhancement Services was the authorized agent for Advanced Auto Parts, one of the tenants proposed for this location. Mr. Kubacki then stated the area variance request was with respect to the size of the pylon sign at this location. Mr. Kubacki stated that the Brunswick Code allows one pylon sign, with 35 square feet per side, for a total of 70 square feet for the pylon sign. The applicant seeks a variance to allow a pylon sign totaling 75 square feet per side. Mr. Kubacki reviewed several factors which he stated support the variance, including adequate letter height on the sign, adequate notice to the public and potential customers, visibility issues along the Hoosick Road corridor and the character of this commercial corridor. Mr. Kubacki stated that the sign height is proposed for 20 feet, and is currently located 15 feet from the Hoosick Road right-of-way. Member Sclafani stated that the Brunswick Code requires a minimum of 15 feet setback for the pylon sign, but if the pylon sign is in excess of 15 feet, the

setback has to be at least the height of the sign, which in this case would require the pylon sign to be located 20 feet from the Hoosick Road right-of-way. Mr. Kubacki stated that the pylon sign will be relocated so it is 20 feet from the Hoosick Road right-of-way. Chairman Steinbach asked Mr. Kubacki about the six page submittal, and how Mr. Kubacki calculated the 75 square feet per side of the proposed pylon sign. It was determined that there were computation errors in the six page submittal, but Mr. Kubacki did confirm that Site Enhancement Services is proposing a sign which will total 75 square feet per side. The Zoning Board members reviewed the Brunswick sign law, which does provide that for retail plazas containing four business or more, a pylon sign totaling 60 square feet per side is allowed. Chairman Steinbach noted that in this case, two retail stores are currently approved, and the applicant is seeking a pylon sign of 75 square feet per side. The Zoning Board then opened the public hearing on this application. The notice of public hearing was read into the record, noting that the hearing notice had been published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. No members of the public wished to provide any comment on this application. Thereupon, Member Clemente made a motion to close the public hearing, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. Attorney Gilchrist then stated the Zoning Board needed to make a SEQRA determination on this application, and generally reviewed the standards for determinations of environmental significance under SEQRA. Member Schmidt stated that the only potential environmental impact from the requested sign variance was a visual impact, but he did not feel this was a significant impact given the character of the Hoosick Road corridor being commercial. The remaining Zoning Board members concurred in this opinion. Thereupon, Member Clemente made a motion to adopt a negative declaration under

SEQRA, which motion was seconded by Member Sclafani. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board members then proceeded to deliberate on the elements for the requested sign area variance. On the element of whether the sign variance would change the character of the area or create a detriment to nearby properties, Member Sclafani stated that the Hoosick Road corridor was already commercial in character, and this proposed sign would not alter that character. Chairman Steinbach stated that the Zoning Board should be careful concerning the pylon signage on the Hoosick Road corridor, and noted that the Brunswick Code provided for a total of 60 square feet per side for a pylon sign where there is a plaza containing four retail shops, and that in this case, the applicant was seeking 75 square feet per side for the pylon side where only two retail units are approved. Chairman Steinbach felt that this sign was too large for two retail units, and stated that alternatives to this size should be considered. Chairman Steinbach stated that he did not have any issue concerning the height of the pylon sign, but that the square footage per side of the pylon sign was a concern. Chairman Steinbach concluded that the requested variance of 75 square feet for the pylon sign could be a detriment to nearby properties. As to whether there was a feasible alternative available, Chairman Steinbach asked Mr. Kubacki whether the proposed size for this sign was the standard size for all Advanced Auto Parts stores. Mr. Kubacki said this was a standard specification established by Advanced Auto Parts. Attorney Gilchirst stated that on this element, the Zoning Board members should also consider whether any site constraints existed that supported the proposed size of the sign, or whether a feasible alternative existed which was available to the applicant. Chairman Steinbach stated that there was no problem with seeing this sign when proceeding from the west, and that while there is a small curve in Hoosick Road when proceeding in the easterly direction, this sign would be very visible to cars going in an easterly direction on

Hoosick Road. Member Clemente also stated that since Advanced Auto Parts was a national franchise with an easily recognizable sign, the total size of the sign was not as significant a factor. As to whether the requested variance was substantial, Chairman Steinbach stated that he felt the variance request was substantial, since Brunswick Code did allow 60 square feet per side for a pylon sign for a retail plaza containing four retail businesses, and that the applicant is seeking 75 square feet per side for the pylon sign where only two retail units are approved. Chairman Steinbach felt that this was a substantial variance, and all members of the Zoning Board agreed. The Zoning Board members generally concurred that there would not be any significant adverse environmental or significant impact from the requested variance, but did determine that the variance is self-created. Chairman Steinbach then stated the Zoning Board members and the applicant should consider an alternative, and proposed that a reasonable alternative would be a 60 square foot per side pylon sign for this location, and require that the pylon sign be a minimum of 20 feet from the Hoosick Road right-of-way. All members of the Zoning Board felt this was a reasonable alternative. Mr. Kubacki on behalf of Site Enhancement Services stated that a pylon sign of 60 square feet per side was acceptable, and would revise the application request accordingly. Attorney Gilchrist asked whether the sign would be illuminated. Mr. Kubacki stated that the sign would have interior illumination. The Zoning Board asked whether the sign would be kept on 24 hours a day. Mr. Kubacki stated that the sign would be lit during business hours only, and would be turned off during non-business hours. Upon further deliberation, Chairman Steinbach made a motion to grant the sign variance on the following conditions:

1. The total square foot per side for the pylon sign at 616 Hoosick Road is limited to a total of 60 square feet per side;

2. The pylon sign must be a minimum of 20 feet from the Hoosick Road right-of-way, with the height of the pylon sign limited to 20 feet; and
3. The pylon sign is to be illuminated only during business hours, and the interior illumination is to be turned off during non-business hours.

Member Sclafani seconded the motion subject to the stated conditions. The motion was unanimously approved, and the sign variance granted subject to the stated conditions.

The next item of business on the agenda was the area variance application submitted by Robert Button for property located at 318 Carrols Grove Road. The applicant seeks both a side yard setback and rear yard setback variance for the placement of a shed at this location, and the proposal requests that the shed be located 5 feet from the side yard line and 5 feet from the rear yard line, whereas the Town Code requires a side yard setback of 25 feet and a rear yard setback of 25 feet. Mr. Button was present, and confirmed there were no changes in the application. The Zoning Board opened a public hearing on this application, and the public hearing notice was read into the record, noting that the hearing notice was published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent property. Chairman Steinbach opened the floor for receipt of public comment. David Tarbox, 1483 New York 7, stated that he owns property on three sides of the Button parcel, that Button is a good neighbor, but that a 5 foot setback from the side yard line and rear lot line was not enough of a setback, noting that while he had no issue with Mr. Button he was concerned about any future owners having a structure that close to the side yard and rear yard line adjacent to his property. Mr. Tarbox also noted that it was wet in that corner of the Button parcel, and asked whether a concrete floor would be used for the shed. Mr. Button stated that the issue needed to be finalized with the shed manufacturer, but that use of crusher material was likely. There were no further

public comments. Member Clemente made a motion to close the public hearing, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. Attorney Gilchrist noted that this application is a Type 2 action under SEQRA, and no further SEQRA determination is required. As to whether the requested variance would change the character of the area or create a detriment to nearby properties, Member Shover asked whether the terrain in that area of the yard limited the location of the shed to 5 feet off the side yard and rear yard lines, or whether the shed could be moved further into the lot. Mr. Button stated that he could go as far as setting the shed 15 feet from the side yard line and 15 feet from the rear yard line, and that the terrain would allow those setbacks. The Zoning Board members felt this was a reasonable alternative, and Mr. Tarbox also stated that 15 foot setbacks from the rear yard and side yard lines were acceptable to him. Having had this discussion, the Zoning Board members felt that the 15 foot setback from the side yard and rear yard lot lines was a feasible alternative available to the applicant. The Zoning Board members also felt that the original request of 5 feet from the side yard and rear yard lines would result in a substantial variance, but felt the alternative of 15 foot setback from the side yard and rear yard lines was acceptable. The Zoning Board members determined that the variance request resulting from the alternative location would not result in any physical or environmental impact. The Zoning Board members also determined that while there were some terrain restrictions, the requested variance was self-created, but that this did not preclude the granting of the variance. Based on these deliberations, and the discussion concerning the feasible alternative, Member Clemente then made a motion to grant the area variance on the following condition:

1. The shed must be located 15 feet from the side yard lot line and 15 feet from the rear yard lot line.

Member Sclafani seconded the motion subject to the stated condition. The motion was unanimously approved, and the area variance granted subject to the stated condition.

The next item of business on the agenda was the area variance application submitted by Jim and Kim Wilson for property located at 3 Arminghall Drive. The applicants seek an area variance from the front yard setback and side yard setback requirements of the Brunswick Zoning Ordinance with respect to the placement of a shed on this corner lot. The Zoning Board opened a public hearing on this application. The notice of public hearing was read into the record, noting that the public hearing notice had been published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. No members of the public wished to comment on this application. Chairman Steinbach did ask the applicant whether he owns the house at this location. Mr. Wilson stated he did own the property. Chairman Steinbach noted that the shed had already been placed on the property in the proposed location, and asked whether Mr. Wilson installed the shed in that location or whether it was on the site when he bought the property. Mr. Wilson confirmed that he had placed the shed in that location on the property. The Zoning Board members then had an extended discussion with Mr. Wilson concerning other alternative locations for this shed on the lot. The slope of the lot was discussed, as well as wet areas on the lot. Member Sclafani asked whether the shed could be moved deeper into the lot so that it was in line with the house. Mr. Wilson stated that the shed could be moved deeper into the lot so that it was in line with the house. Chairman Steinbach asked whether Mr. Wilson was aware of the required setbacks for this corner lot when he put the shed on the property. Mr. Wilson stated he was not aware of the setbacks, although he did have three meetings scheduled with the Building Department, but each time he sought to meet with the Building Department that meeting was

postponed due to the Building Department having to perform inspections. The Zoning Board members then reviewed the required setbacks for this corner lot. The lot is located in the A-40 Zoning District, and as a corner lot, requires a front yard setback of 75 feet and a side yard (adjacent to the public road) setback of 75 feet. In addition, there is a ten foot minimum distance between the main or principal building on the lot and the accessory shed. The Zoning Board members reviewed the plot plan showing the location of the shed, and generally concurred that the request is for a substantial variance from the front yard and side yard setback requirements under the Brunswick Code. The Zoning Board members then held extensive discussion with Mr. Wilson concerning other available locations for the shed on this lot, which at a minimum would reduce the extent of the requested variance. Mr. Wilson stated that he would review the site and the plot plan, and work on a revised location of the shed in order to reduce the extent of the requested variance. The Zoning Board members determined to keep the public hearing open, subject to any amendment in the application due to a revised shed location. This matter is placed on the May 16, 2016 agenda for further discussion, subject to amending the variance application and re-noticing the public hearing based on any amended application.

One item of new business was discussed.

An area variance application has been submitted by Kasselmann Solar, LLC for property located at 831 Hoosick Road, the location of the Ace Hardware store on Hoosick Road. Anna Marciano, of Kasselmann Solar was present. Ms. Marciano stated that she was the agent for AG Distributors, and Angelo Grasso, the owner of the Ace Hardware store. The applicant is seeking to install solar panels on a carport-type structure to be located on the western side of the Ace Hardware store within the fenced area on the site. Ms. Marciano stated that the carport-type structures would be accessory structures, and that they are proposed to be located two feet from

the principal building on this site, where the Town Code requires a 10 foot separation between the principal building and accessory structures. The Zoning Board members reviewed the application materials. Member Shover had questions concerning the carport-type structure, its location, and the use of the power generated from the solar panels to be put on the top of the carport-type structure. Member Schmidt asked whether the carports would be used for storage, and Ms. Marciano stated that the carports are engineered structures and would be used for storage as well as a location where people could view items. Ms. Marciano stated that her company had looked at all alternatives for the site, but found that this was the preferred location for the solar structures so as not to impact available parking on site or traffic flow. Member Sclafani stated that these accessory structures should not take up any parking spaces on the site, noting that she had seen all of the parking spaces at the Ace Hardware store filled during the past weekend. The Zoning Board members concurred that the application materials are complete for purposes of scheduling the public hearing. This matter is scheduled for public hearing at the May 16, 2016 meeting to commence at 7:00pm.

The index for the April 18, 2016 meeting is as follows:

1. Nitz - Special use permit - 5/16/2016
2. Smith - Area variance - 5/16/2016 (public hearing to continue at 6:15pm)
3. Site Enhancement Services - Sign variance - granted with conditions
4. Button - Area variance - granted with condition
5. Wilson - Area variance - 5/16/2016
6. Kasselmann Solar, LLC - Area variance - 5/16/2016 (public hearing to commence at 7:00pm)

The proposed agenda for the May 16, 2016 meeting currently is as follows:

1. Nitz - Special use permit

2. Smith - Area variance (public hearing to continue at 6:15pm)
3. Wilson - Area variance
4. Kasselmann Solar, LLC - Area variance (public hearing to commence at 7:00pm)

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD MAY 16, 2016

PRESENT were CHAIRMAN MARTIN STEINBACH, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The draft minutes of the April 18, 2016 meeting were reviewed. Upon motion of Member Clemente, seconded by Member Sclafani, the minutes of the April 18, 2016 meeting were unanimously approved without amendment.

The first item of business on the agenda was the special use permit application submitted by Ken and Joann Nitz for property located at 53 Plank Road. The applicants seek approval of a special use permit to allow the premises to include an in-law apartment. Ken and Joann Nitz were present. Chairman Steinbach stated that the public hearing had been closed on this application at the April 18 meeting. Chairman Steinbach further stated that the applicants had provided copies of the paperwork which had been submitted by Mr. Nitz at the April 18 meeting, and that all members of the Zoning Board had been provided copies of those documents. In addition, Chairman Steinbach noted the receipt of a letter from the Rensselaer County Department of Health dated May 4, 2016. Chairman Steinbach stated that in the letter from the Rensselaer County Department of Health, the compliance history of the septic system at 53 Plank Road was reviewed, and that the County Health Department had advised Mr. Nitz and the Town of Brunswick that the property at 53 Plank Road was approved with a septic design for two bedrooms only, and that if

the additional apartment would exceed the previously-approved two bedrooms then the property owner is required to submit an additional application to the Rensselaer County Health Department for the review of the existing septic system to determine if the current septic system as designed will meet the design standards for any additional bedrooms. Chairman Steinbach asked Mr. Nitz about the May 4 letter from the Rensselaer County Health Department. Mr. Nitz responded by providing a copy of Part 75 septic regulations, stating that the current septic system did meet the requirements for the additional bedroom, and that the Rensselaer County Health Department had advised him that the current septic system was adequate and had provided him with a copy of the Part 75 regulations. Member Clemente asked whether the Part 75 regulations submitted by Mr. Nitz was particular to his septic plan, or was just a standard table providing for general regulation of septic systems. Mr. Nitz stated that the table was the standard regulations for all septic systems. Mr. Nitz stated that his septic system was over-designed, and is approved for three bedrooms. Attorney Gilchrist stated that the record reflects a letter dated May 4 from the Rensselaer County Department of Health clearly stating that the septic system for 53 Plank Road is approved only for two bedrooms, and that if any additional bedroom was added, Mr. Nitz would be required to submit an application to the Rensselaer County Health Department for review and approval. Further, attorney Gilchrist advised the Zoning Board members that the Zoning Board did not have the jurisdiction to interpret or apply general septic regulatory standards, and that the septic design review and approval was within the exclusive jurisdiction of the Rensselaer County Health Department. Further, attorney Gilchrist stated that the Town of Brunswick Zoning Ordinance does not expressly regulate “in-law” apartments, but the application is reviewed pursuant to the regulations for multiple dwellings, and that pursuant to the Brunswick Zoning Ordinance, for approval of a special use permit for a multiple dwelling, approval of water supply and sewage

disposal by the Rensselaer County Department of Health is mandatory. Ms. Guastella stated that her office had spoken with the Rensselaer County Department of Health during the afternoon of May 16, and it is her understanding that this property is approved only for two bedrooms. Mr. Nitz stated that the Rensselaer County Department of Health has informed him that they will not re-inspect this septic system. Chairman Steinbach stated that the Zoning Board does not have the jurisdiction to interpret or apply the general septic regulations, and that the Brunswick Zoning Ordinance requires approval of the Rensselaer County Department of Health for adequate septic in connection with a special use permit for a multiple dwelling. Mr. Nitz argued that the Rensselaer County Department of Health had called the Town repeatedly, and that the Town had neglected to respond to the Health Department. Ms. Guastella stated that she has a record of all calls by the Rensselaer County Department of Health into her office concerning the Nitz special use permit application, that she had responded to the calls from the Health Department, and that her office had most recently spoken with the Health Department during the afternoon of May 16. Attorney Gilchrist stated that the applicant had repeatedly asserted that the Town had lost all records of prior approvals, and now the applicant is further stating that the Town has neglected to call the Rensselaer County Health Department, which fact has been disputed by Ms. Guastella. Attorney Gilchrist advised the Board that it must consider the application based on the evidence in this record on this application, including the most recent letter from the Rensselaer County Department of Health dated May 4 which had previously been reviewed. Chairman Steinbach stated that the Zoning Board's hands were tied in this matter, and the approval from the Rensselaer County Department of Health for septic for an additional bedroom at the property is mandatory. Mr. Nitz was adamant that the Rensselaer County Department of Health will not perform any further review of his septic system. Chairman Steinbach stated that the letter from the Rensselaer County

Department of Health dated May 4 expressly states that Mr. Nitz will need to make an application to the Health Department, and that the Health Department will review the existing septic system to determine if the current system as designed will meet regulatory standards for an additional bedroom. Chairman Steinbach stated he was not clear as to what Mr. Nitz was saying to the Rensselaer County Department of Health, but that the letter from the Department of Health dated May 4 is clear that when a proper application is received, the Rensselaer County Health Department will review the existing septic system to determine if that current septic system will meet regulatory standards for an additional bedroom. Member Schmidt also commented that the application documents submitted by Mr. Nitz state that the property currently is used for single-family residence and has a total of three bedrooms and questioned whether the single-family home on this property includes three bedrooms without adding the additional apartment. Mr. Nitz stated that the existing single-family home only has two bedrooms. Chairman Steinbach stated that the applicant had provided proof only that the Rensselaer County Health Department has approved this property for a septic system for two bedrooms only, and that the applicant has failed to provide proof that the Rensselaer County Health Department has approved the septic system for this property for any use in excess of two bedrooms, which is a mandatory requirement for the Nitz application seeking a special use permit for a multiple-dwelling at this property. Based on that lack of proof, Chairman Steinbach made a motion to deny the special use permit for a multiple dwelling use at 53 Plank Road, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the special use permit is denied.

The next item of business on the agenda was the area variance application submitted by Daniel Smith for property located at 899 Hoosick Road. Daniel Smith was present. Chairman Steinbach inquired whether there were any changes to the application or to the property at issue.

Mr. Smith stated there were no changes to the application or to the property. No members of the Zoning Board had any further questions for Mr. Smith at this point. Chairman Steinbach noted that the Zoning Board had retained the Laberge Group to provide technical assistance on this application with regard to the issue of surface water runoff and effect, if any, of the garage additions upon surface water runoff and potential ponding on any properties. Ronald Laberge, P.E. of Laberge Group was present at the meeting, and informed the Board that his office had prepared a letter report dated May 16, 2016, and copies had been provided for each member of the Zoning Board. Mr. Laberge then reviewed the May 16 letter report for the Zoning Board members. The Laberge letter report dated May 16, 2016 is made a part of this record. Mr. Laberge also stated that his letter report did include a brief discussion of options to address surface water runoff and ponding at the properties in question, and the Zoning Board members generally discussed these options with Mr. Laberge. Attorney Gilchrist advised the Board that any discussion regarding options to address stormwater runoff or ponding of water is for informational purposes only, and that the Zoning Board members should review the report from Laberge Group in relation to the elements to be considered on the area variance application. Member Schmidt asked Mr. Laberge as to whether any ponding of water at these properties was occurring as a result of the additional concrete pad and roof area that Mr. Smith had constructed at the rear of the garage extension. Mr. Smith noted on the record that a swimming pool had previously been located in that area where the concrete and roof structure at the rear of the garage extension is now located. Mr. Laberge stated that while there was some runoff expected from this additional concrete pad area, it would not be significant. Attorney Gilchrist inquired for the record whether Laberge Group concluded that the drainage on these properties was flowing generally in an east to west direction from the Brazee property to the Smith property, and then further in a westerly direction. Mr. Laberge

confirmed that the topography was generally flat, but did have a slight change in grade and that the surface water flow was in an east to west direction. Attorney Gilchrist also sought to confirm for the record that the Laberge letter report concludes that while additional stormwater runoff from the roof of the garage extensions on the Smith property added to the surface water runoff at these properties, it did not contribute a significant amount to the overall surface water runoff at these properties. Mr. Laberge concurred. Attorney Gilchrist also sought to confirm for the record that the Laberge letter report concludes that the existing structures, including house and detached garage, and driveway on the Brazee property is also contributing to the surface water runoff at these properties. Mr. Laberge concurred. Attorney Gilchrist also sought to confirm for the record that the Laberge letter report concludes that any ponding occurring on the Brazee property appears to be the result of the garage extensions on the Smith property creating a dam-like effect, where previously it appears from the topography that surface water runoff originating on both the Brazee and Smith parcels was draining in a general east-to-west direction and possibly continuing to drain in a westerly direction, but such surface water runoff was now being interrupted by the garage extensions on the Smith lot. Mr. Laberge stated that this was a significant factor in any ponding on the Brazee property. Chairman Steinbach noted that the public hearing on this application remained open and opened the floor for receipt of any additional public comment. Dawn Vandewalker of Kingsbury, the daughter of Mr. and Mrs. Brazee, handed up an additional submission to the Zoning Board members, and provided a copy of her submission to each Zoning Board member. Ms. Vandewalker reviewed the past efforts of Brazee to have the Town address the Smith garage extensions, that Brazee had been fighting this issue since 2012, that Brazee had provided numerous documents and photographs to the Town concerning these garage extensions and the impact upon the Brazee property, that the problems on the Brazee property continue to

date, that the after-the-fact variance application submitted by Smith is still incomplete and Mr. Smith has not provided any proof to warrant approval of the variances, that the Town should have commenced enforcement proceedings back in 2010, and that the Town only moved forward on the Smith property when Brazee threatened “to go public”. Chairman Steinbach stated that the Zoning Board members will review the area variance applications based on the proof submitted on the application and during the public hearing, and that any claim of the Town not previously pursuing enforcement was not within the jurisdiction of the Zoning Board. Ms. Vandewalker said that the Zoning Board should consider the history of this matter. Ms. Vandewalker did hand up the additional submittal, which includes color photographs. Ms. Vandewalker stated that the Smith variance applications violate standards for area variances, and while this matter has pended for several months, the Brazee property value continue to go down. Chairman Steinbach inquired whether there were any further public comments. Hearing none, Chairman Steinbach made a motion to close the public hearing on the Smith area variance application, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing closed. The Zoning Board members then reviewed the specific variances requested, which include a side yard setback variance for the garage extensions, a height variance for the garage extensions, and a variance for the total percentage of lot coverage for accessory private garages. Attorney Gilchrist also noted that the Brunswick Zoning Ordinance includes a provision which allows a property owner to extend a nonconforming structure, provided that the extension does not increase the specific nonconformity. Attorney Gilchrist stated that in this case, the record discloses that the original garage structure on the Smith lot is a nonconforming structure in that it was located approximately one foot from the side yard lot line, but that the two extensions to the garage are located closer than one foot to the side yard lot line, likely resulting from the original detached

garage structure not being built parallel to the side yard lot line. The Zoning Board members reviewed the surveys submitted on the application, which show the rear of the concrete pad with roof overhang extending and apparently encroaching onto the Brazee lot. Attorney Gilchrist confirmed that the Zoning Board was without jurisdiction to grant a variance allowing an encroachment onto an adjacent property, and also confirmed for the record that Mr. Smith stated he would remove any part of the structure which encroaches onto the Brazee lot, and that the Zoning Board should consider the side yard setback variance in relation to the structure being directly adjacent to the side yard lot line with no setback provided. The Zoning Board members reviewed the Code requirements applicable to this matter. Ms. Guastella explained the measurement of height of structures under the Brunswick Zoning Ordinance, and stated that this garage structure is approximately 16 feet high pursuant to the Brunswick Zoning Ordinance height measurement, and that the Brunswick Zoning Ordinance has a height limitation of 15 feet for the R-15 Zoning District. The Zoning Board members also confirmed that accessory private garage structures are permitted under the Brunswick Zoning Ordinance to occupy 4% of the total lot area in the R-15 Zoning District, and that the detached private garage structure on the Smith lot, including both extensions, covers 10.6% of the lot area. After further discussion, Chairman Steinbach requested all members of the Zoning Board to review all of the application materials and submittals received by the Zoning Board from the public in connection with the Smith area variance applications, and also the Laberge letter report, and that the Zoning Board should consider scheduling and holding a special meeting for the purpose of deliberation on the Smith variance application, particularly in light of the large evidentiary record. The Zoning Board members concurred with this approach. A special meeting has been scheduled for June 6, 2016 at 6:00pm for the purpose of reviewing and deliberating on the Smith area variance application. Chairman

Steinbach also noted that it was the Zoning Board's intent to deliberate at the June 6 special meeting, and have a draft written decision on the Smith area variance application for review at the Zoning Board regular June meeting to be held on June 20, 2016.

The next item of business on the agenda was the area variance application submitted by Jim and Kim Wilson for property located at 3 Arminghall Drive. This matter had been noticed for public hearing at the April 18 meeting, but the Zoning Board members had discussed alternative locations that should be investigated by Mr. Wilson for the shed location on this lot, particularly in light of the fact that this is a corner lot located at the intersection of Arminghall Drive and Charnwood Lane. Mr. Wilson had reviewed alternate locations, and the applicants provided to the Zoning Board a site sketch showing an alternative location for the shed on this lot, which is approximately 69 feet from the lot line adjacent to Arminghall Drive, and 27 feet from the property line adjacent to Charnwood Lane. The shed location is also 10 feet from the principal house on the lot. The Zoning Board members reviewed the revised site plan with the shed location, and discussed the revisions with the applicants. The Zoning Board determined that the revisions were substantial, and that the public hearing should be re-noticed and held at the June 20 meeting. This matter is to be re-noticed for public hearing to be held on June 20, 2016 at 6:15pm.

The next item of business on the agenda was the area variance application submitted by Kasselmann Solar LLC on behalf of AG Distributors for property located at 831 Hoosick Road, the site of the existing Ace Hardware store. Anna Marciano of Kasselmann Solar was present. Ms. Marciano confirmed there were no changes to the application. The Planning Board opened the public hearing on the application. The notice of public hearing was read into the record, with the notice having been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties. The floor was opened for receipt of

public comment. No members of the public wished to comment on the application. Member Sclafani asked the applicant as to whether the fire code issues had been addressed with the Brunswick No. 1 Fire Department. Ms. Marciano stated she had reviewed the application with Gus Scifo of the Brunswick No. 1 Fire Department, and that the fire department had no objection. Ms. Guastella stated that she had received a memo from the Brunswick No. 1 Fire Department stating they did not have an objection to the variance application, but did request information concerning the location of all shut-offs for the additional equipment. Ms. Marciano confirmed that all shut-offs were located inside the principal building. Chairman Steinbach wanted to confirm that the carport-type structure is located within the existing fenced area on the west side of the Ace Hardware store. Ms. Marciano confirmed that location. Chairman Steinbach also confirmed that while the structure is identified as a “carport”, there was no proposed parking or car storage proposed for these two “carports”. Ms. Marciano confirmed that there is no parking proposed, that it is within the existing fenced area used for seasonal items, and it will be in proximity to the gazebo which is located within the fenced area on the west side of the Ace Hardware store. Chairman Steinbach also confirmed that the structures would be approximately 2.5 feet from the principal building, and that there was nothing proposed for use between the carport-type structures and the side of the principal building. Ms. Marciano confirmed that there was no proposed use between the carport-type structures and the building, except for conduit which will connect the solar panels to the utility location within the principal building. Ms. Marciano confirmed that solar panels had already been installed on the roof of the principal building, and that all connections for these roof solar panels are interior in the utility/electric room in the principal building. Chairman Steinbach confirmed that the structures would be in the fenced area, and that the fence will continue to be maintained. Ms. Marciano confirmed that the fence will be maintained. Member

Clemente confirmed that the use of the garden center within the fenced area on the west side of the building would remain the same, and that this proposal was to just add two structures for the purpose of additional solar panels. Ms. Marciano confirmed that statement. Member Shover confirmed the type of roof structure for the carport-type structures for the solar panels. Chairman Steinbach then requested any additional comment from the public. Hearing none, Member Shover made a motion to close the public hearing, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing closed. Thereupon, the Zoning Board members proceeded to deliberate on the application. Attorney Gilchrist stated that the area variance was sought in connection with a commercial facility, and therefore a determination under SEQRA is required. Member Clemente stated that in her opinion, there were no potential significant adverse environmental impacts arising from the requested variance, and made a motion to adopt a negative declaration under SEQRA. The motion was seconded by Chairman Steinbach. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board members proceeded to deliberate on the elements for the requested area variance, which seeks a variance from the required distance for accessory structures from the principal structure of 10 feet, requesting that structures be allowed to be placed 2.5 feet from the principal structure. The Zoning Board members generally found that the addition of the carport-type structures at this location would not result in any change in the character of the area, with the area continuing to be commercial in nature, and that the addition of these structures and solar panels would not create a detriment to any off-site properties; that there were no feasible alternative locations on the lot for these additional solar panels, as there is not additional roof area for any additional solar panels, that propane sales are located to the east of the principal building, that other required setbacks limit other locations on the lot, and that the Zoning Board determined that these panels should not

occupy any existing parking areas on the site; that while the requested variance is substantial, the Zoning Board does note that the use of the accessory structure for solar panels was reviewed by the Brunswick No. 1 Fire Department and that no objection had been raised; that the requested variance would not result in any detriment to the environment or surrounding properties, noting that the Zoning Board had adopted a SEQRA negative declaration on the application, and further that Chairman Steinbach stated that installation of solar panels should be viewed as a “green project”; and that while the requested variance can be considered self-created, this factor did not preclude granting the requested variance. Based on these factors, and in balancing the benefits to the applicant as weighed against any detriment to the neighborhood in particular and community in general, the Zoning Board determined that the requested area variance should be granted. Chairman Steinbach made a motion to approve the requested variance without conditions, which motion was seconded by Member Clemente. The motion was unanimously adopted, and the area variance granted.

The next item of business on the agenda was the referral from the Brunswick Town Board of the petition for rezoning filed by Mark and Mary Kate McCarty for property located at 1001 Hoosick Road. The applicants seek to change the Zoning District classification for this parcel from R-25 to B-15. F. Redmond Griffin, Esq. was present on behalf of the applicants, and presented an overview of the requested zone change for this parcel to the Zoning Board members. Attorney Griffin reviewed the site map of this parcel as well as the Zoning Map of the Town of Brunswick which shows the parcels surrounding the McCarty lot on the north side of Hoosick Road already principally zoned B-15. Attorney Griffin also reviewed the proposed use of the parcel by Stewarts Shop to relocate their existing store at the intersection of Hoosick Road and Route 142 to the McCarty lot in the event that lot is rezoned. Attorney Griffin reviewed that he

had presented the petition to the Town Board, and also had presented the proposal to the Brunswick Planning Board in relation to the Planning Board's requested recommendation, and that he had not received any objections to the proposed rezoning, but did note that the Planning Board had requested information as to whether there were any private deed restrictions for the McCarty lot. Attorney Griffin stated that he had performed the title search, and that there are no private deed restrictions of record which prohibit the commercial use of the property. Attorney Griffin did note that any future use of the McCarty lot would require coordination with the New York State Department of Transportation, Rensselaer County Highway Department, and Town of Brunswick in terms of traffic circulation and traffic safety at this location. Chairman Steinbach noted that it was his understanding that the recently-adopted Town Comprehensive Plan identified this location for commercial use, and that this rezoning would be consistent with the Comprehensive Plan. Attorney Gilchrist stated that the Brunswick Planning Board had deliberated on the Planning Board recommendation at its meeting held May 5, and that he anticipates the Planning Board to adopt their written recommendation at the Planning Board meeting to be held May 19, and that the Planning Board did concur that a positive recommendation should be issued subject to confirmation of any private deed restrictions. The Zoning Board members generally concurred that a positive recommendation should be issued, and determined to review the final written recommendation of the Planning Board, and that the Zoning Board may simply adopt a resolution joining in the Planning Board recommendation. This matter is placed on the June 20 agenda for further discussion.

The index for the May 16, 2016 meeting is as follows:

1. Nitz - Special use permit - Denied;
2. Smith - Area variance - June 6, 2016 (Special meeting);
3. Wilson - Area variance - June 20, 2016 (public hearing re-noticed for 6:15pm);
4. Kasselmann Solar - Area variance - Granted;
5. McCarty - Referral from Town Board for recommendation on re-zoning petition - June 20, 2016.

The agenda for the June 6, 2016 special meeting is as follows:

1. Smith - Area variance.

The proposed agenda for the June 20, 2016 meeting currently is as follows:

1. Smith - Area variance;
2. Wilson - Area variance (public hearing at 6:15pm);
3. McCarty - Referral from Town Board for recommendation on petition for zone change.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS SPECIAL MEETING HELD JUNE 6, 2016

PRESENT were CHAIRMAN MARTIN STEINBACH, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board of Appeals convened a special meeting to review and deliberate concerning the area variance application submitted by Daniel Smith for property located at 899 Hoosick Road.

The Zoning Board of Appeals opened the special meeting on June 6, 2016, and adjourned for confidential attorney-client communications with Zoning Board counsel Gilchrist to seek legal advice on legal issues associated with the Smith area variance application. Following such privileged discussions, the Zoning Board members reconvened in open session to review and deliberate on the record evidence submitted on the Smith area variance application. The Zoning Board members reviewed the specific variance requests, which include an area variance concerning the side yard setback, an area variance for the height of the garage structure, and a variance concerning the total percentage of lot coverage for a private garage on this specific lot. The Zoning Board members deliberated on each of the variance requests, reviewing the record with regard to the standards for consideration with respect to each variance request. Following such deliberation, attorney Gilchrist recommended that a set of proposed fact findings be drafted for review and consideration by the Zoning Board members, and thereafter the Zoning Board

should further deliberate and make a determination on whether to grant, grant with conditions, or to deny each of the variance application requests. The Zoning Board members concurred, and directed attorney Gilchrist to prepare such draft fact findings for review by the Zoning Board members at the regular June 20 meeting, at which time the Zoning Board members intend to complete their deliberations and make a determination as to whether to grant, grant with conditions, or deny each of the variance application requests.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD JUNE 20, 2016

PRESENT were CHAIRMAN MARTIN STEINBACH, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the May 16, 2016 regular meeting. Member Clemente noted a typographical correction at page 7, line 11, changing the word “continue” to the word “continues”. Subject to the typographical correction, Member Clemente made a motion to approve the May 16, 2016 regular meeting minutes, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the minutes of the May 16, 2016 regular meeting were approved as corrected.

The Zoning Board members reviewed the draft minutes of the June 6, 2016 special meeting. Upon motion of Member Clemente, seconded by Member Sclafani, the minutes of the June 6, 2016 special meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Daniel Smith for property located at 899 Hoosick Road. The Zoning Board members reviewed the draft written findings that were prepared based on the deliberations held at the June 6, 2016 special meeting. Chairman Steinbach reviewed the three separate area variance requests, including the side yard setback variance, height variance, and variance for percentage of lot coverage for private garages. Chairman Steinbach also confirmed that each of the Zoning Board members had

received the draft written findings that were prepared based on the deliberations at the June 6, 2016 special meeting, and had adequate time to review the draft findings. The Zoning Board members determined to review the draft findings with respect to the factors which must be considered for each of the requested area variances in this matter. Attorney Gilchrist reviewed the standard for the requested variances, where the Zoning Board must weigh the benefit to the applicant as a result of the variances as against any detriment to the neighborhood in particular and the Town in general, and to complete that balancing test the Zoning Board considers several factors including whether the variance would create a detriment to nearby properties or impair the character of the neighborhood; whether a feasible alternative exists other than the requested variance; whether the variance is substantial; whether the requested variance would result in an adverse effect on physical or environmental conditions in the neighborhood; and whether the need for the variance is self-created. Chairman Steinbach then reviewed the written findings concerning each of these factors with respect to the side yard setback variance request, as follows:

1. *Character of the Neighborhood.* The Zoning Board members conducted site visits and reviewed numerous photographs of the Owner's garage addition. The garage and the garage additions are consistent with the character of the neighborhood, and very similar to the other lots in the surrounding area, including the Brazee lot. Similar to the Smith lot, the Brazee lot located directly to the east includes a house, driveway, and detached private garage on a nonconforming lot.
2. *Detriment to Nearby Properties.* The additions to the original nonconforming garage structure on the Smith lot do not create any detriment to nearby properties, with the exception of creating a ponding of surface water on the westerly side of the Brazee lot during periods of heavy precipitation. According to the Laberge report, the significant contributing factor to the ponding of surface water on the Brazee lot during periods of precipitation is surface water originating on the Brazee lot, which historically had been discharged in a westerly direction onto and/or through the Smith lot, but which is now retained on the Brazee lot as a result of a dam-effect created by the Smith garage extensions. During periods of precipitation, most of the water from the roof of the Smith garage extensions is being directed through gutters to the west of the Smith lot and away from

the Brazee lot. A portion of such roof runoff is discharged from Smith to the Brazee lot, but is not significantly contributing to the ponding of water on the Brazee lot during precipitation events.

3. *Alternative.* The Owner's goal was to create extra storage area. The most feasible method to achieve this result was to extend the existing garage, since the size of the lot does inhibit other options.
4. *Whether Variance is Substantial.* The original detached private garage structure is nonconforming with respect to side yard setback. The original garage structure is located approximately 1 foot from the easterly side yard lot line. While the side yard setback for detached accessory structures under the Brunswick Zoning Ordinance in the R-15 Zoning District is 25 feet, the original garage structure on the Smith lot is nonconforming, and has a side yard setback of approximately 1 foot from the easterly lot line. According to surveys submitted on the variance application, the original detached garage structure on the Smith lot was not constructed parallel to the easterly side yard lot line, with the rear of the garage structure being further to the east than the front of the garage. The extensions to the original garage structure on the Smith lot were constructed consistent with the side wall locations of the original garage structure. Consequently, the garage extensions decreased the easterly side yard lot line setback from approximately 1 foot to 0 feet. In fact, the surveys submitted on this application show that the rear portion of the concrete pad and roof structure (the second addition) encroach onto the Brazee lot by approximately 1 inch. The Zoning Board has no jurisdiction to consider a variance request resulting in an encroachment on an adjacent lot. Further, under the Brunswick Zoning Ordinance, a nonconforming structure with respect to side yard setback can be added to, provided the side yard setback nonconformity is not increased. In this case, the side yard setback of approximately 1 foot could have been maintained if the original garage structure had been constructed parallel to the easterly side yard lot line. The record shows that the decrease in the side yard lot line setback regarding the garage extensions on the Smith lot was not discovered until surveys were completed.
5. *Adverse Effect on Physical Condition of the Neighborhood.* The additions to the original nonconforming garage structure on the Smith lot do not create any adverse effect on the physical conditions in the neighborhood, with the exception of the surface water ponding on the westerly side of the Brazee lot as discussed in point 2 above.
6. *Self-Created.* The record shows that the need for the side yard setback variance was not discovered until surveys prepared subsequent to the construction of the two extensions to the Smith garage showed a decrease in the easterly side yard setback from approximately 1 foot to 0 feet, and in

fact showed a portion of the rear of the garage extensions (second extension) encroaching onto the adjacent Brazee lot by approximately 1 inch. The record shows that Smith was not aware that the original detached nonconforming garage structure was not constructed parallel to the easterly side yard lot line until such surveys were completed. Nonetheless, Smith did construct the two extensions to the original nonconforming detached garage structure, and in that sense the need for the side yard setback variance is self-created.

The Zoning Board members discussed that, to the extent the requested side yard setback variance concerns any part of the garage extensions that have encroached onto the Brazee lot and are situated on the Brazee lot, the Zoning Board had no jurisdiction to grant such a variance and that part of the side yard setback variance request must be denied. Member Clemente did note that Daniel Smith, at the March 21 Zoning Board meeting, confirmed on the record that he would remove any part of the garage extension structures that encroached on to the Brazee lot. With respect to the issue of the ponding of water on the western portion of the Brazee lot in the vicinity of the garage extensions, Member Schmidt did note that the legal standard is that both lot owners in question here, being Smith and Brazee, have equal rights to improve their properties, even if an improvement causes the back-up of surface water flow onto one of the lots, provided that the improvement is made in good faith for the purpose of developing the property for a rational use, and that surface water must not be directed onto other properties by artificial means such as drainage, ditches, or pipes. Member Schmidt stated that in this case, the significant portion of the ponding of water on the western side of the Brazee lot is originating from surface water flow from the Brazee lot, as disclosed in the Laberge expert report. Chairman Steinbach stated that the Laberge report did identify that some of the roof runoff from the Smith garage extensions was being directed to a concrete pad, which in turn discharges the water back to the Brazee lot, and to that extent, that surface water runoff directed to the Brazee lot must be removed, and all gutters must be directed away from the Brazee lot so that the water is directed in a westerly direction away

from the Brazee lot. Hearing no further comments, the Zoning Board members determined that the part of the side yard setback variance sought for any portion of the garage structure that is located on the Brazee lot is denied, and any part of the Smith garage extensions located on the Brazee lot must be removed. The Zoning Board further determined that the part of the variance application sought for a side yard setback regarding the garage extension structures located entirely on the Smith lot, the variance is granted subject to the following condition:

all roof gutters, downspouts, drains, pipes, or other equipment conveying stormwater runoff from the roof or any other portion of the Smith garage extensions must be collected and conveyed to the west side of the Smith lot and away from the Brazee lot so that no stormwater runoff from the roof or any other portion of the Smith garage extensions is discharged to, or entering upon, the Brazee lot. The Town of Brunswick Building Department is directed to confirm compliance with this condition.

Attorney Gilchrist noted for the record that the SEQRA regulations provide that the granting of individual setback or lot line variances or area variances with respect to single-family residences are Type II actions under SEQRA, and no determination of environmental significance needs to be made. However, to the extent that the height variance and variance for percentage of lot coverage for the private garage do not fall within the SEQRA Type II categories, the Zoning Board should make a determination of environmental significance under SEQRA prior to acting upon the height variance request and the variance request for percentage of lot coverage for private garages. The Zoning Board members reviewed the environmental assessment form, and determined that the record does not include the potential for any significant adverse environmental impacts, and to the extent the ponding of water on the western side of the Brazee lot occurs, that environmental impact is deemed not to be significant. Chairman Steinbach then made a motion to adopt a negative declaration under SEQRA for this action, which motion was seconded by Member Sclafani. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning

Board then proceeded to review the variance application with respect to height of the garage extensions. On that variance request, Chairman Steinbach reviewed the draft written findings concerning the factors to be considered, as follows:

1. *Character of the Neighborhood.* The Zoning Board determines that the height of the garage extensions on the Smith lot are not inconsistent with the rest of the neighborhood. The Zoning Board further determines that the garage extensions appear to be “just another garage”, both while driving by the property and while on the property. Other properties in the neighborhood include similar detached garages, and the Smith garage extensions, including the issue of height, are not considered out of character for the neighborhood.
2. *Detriment to Nearby Properties.* The Zoning Board finds that the height of the garage extensions do not have any impact on nearby properties. The issue of surface water runoff is unaffected by height, as the runoff from the roof of the garage extensions is handled in the same manner regardless of height, and the total volume of runoff is unaffected by height. The roof is angled and guttered in the same manner regardless of height, and moves water from the same downspouts.
3. *Alternative.* The Zoning Board of Appeals determines that the additions to the garage could have been designed and constructed to match the height of the original garage. However, the Zoning Board notes that building the addition at the same height as the original garage structure would not have achieved the Owner’s goal of creating the amount of extra storage space above the garage.
4. *Whether Variance is Substantial.* The Zoning Board of Appeals determines that increasing the height of the garage from 12 feet to 16 feet is not a significant increase when considering similar structures in the immediate neighborhood.
5. *Adverse Effect on Physical Condition of the Neighborhood.* The Zoning Board finds that the height of the garage extensions do not create an adverse effect on physical conditions in the immediate area. The Laberge report does not identify the height of the garage extensions as creating or contributing to an adverse effect on physical conditions.
6. *Self-Created.* The Zoning Board determines that the height variance is self-created, as the Owner would not have required the area variance for height if he constructed the additions at the same height as the original garage structure, and did not increase the regulatory height by four feet.

Following discussion, the Zoning Board members determined to grant the height variance request without conditions. The Zoning Board members then proceeded to discuss the variance request pertaining to percentage of lot coverage for private garages. Chairman Steinbach again reviewed the draft written findings concerning the factors to be considered, as follows:

1. *Character of the Neighborhood.* The Zoning Board determines that while the Brunswick Zoning Code requires garages to be four percent or less of the lot coverage, and the Owner's garage is now 10.62% of the lot coverage, it is consistent with the surrounding properties. The Zoning Board observes that the detached garage on the Brazee lot to the east covers approximately 15% of the lot. The Zoning Board further determines that based on their visual assessment while on the property, the size of the garage is not out of ordinary to the surrounding area or character of the neighborhood.
2. *Detriment to Nearby Properties.* The Zoning Board determines that the percentage of lot coverage regarding the Smith garage with the extensions may be contributing to the ponding effect on the adjacent Brazee lot located to the east. However, as discussed above regarding the side yard setback variance, the percentage of lot coverage is not significantly increasing surface water runoff generated on the Smith lot and discharging to the Brazee lot; rather, the percentage of lot coverage contributes to the dam-effect of the Smith garage extensions, resulting in surface water runoff generated on the Brazee lot now being retained on the Brazee lot during periods of precipitation rather than discharging in a westerly direction onto and/or through the Smith lot.
3. *Alternative.* The Owner's goal was to increase storage space, which could not have been achieved in any other feasible manner than to increase the size of the existing garage, which implicates the percentage of lot coverage issue. The Zoning Board notes that while the Owner could have purchased more land to decrease percentage of lot coverage, this option is not available to the Owner. It is also noted that the original conforming garage structure is 648 square feet, resulting in 4.6% lot coverage. Accordingly, the original garage was in excess of maximum lot coverage, and was nonconforming on that issue as well.
4. *Substantial.* The Zoning Board of Appeals determines that, prior to the construction of the two extensions to the original garage, all structures on the Smith lot covered 1,648 square feet, or 11.7% of the total area of the Smith lot. With the two extensions to the garage, the total percentage of lot coverage for structures on the Smith lot increases to 17.775%. The Zoning Board finds that the total percentage of lot coverage regarding structures on the Smith lot is not substantial, with 82.225% of the lot area remaining open.

Also, the total percentage of lot coverage regarding structures on the Brazee lot is 26.663%.

5. *Adverse Effect on Physical Conditions.* The Zoning Board determines that the percentage of lot coverage for the Smith garage does not create any adverse effects upon physical conditions in the immediate area, except for the surface water ponding on the western side of the Brazee lot. The findings concerning the surface water issue during periods of precipitation as discussed above with reference to the side yard setback variance are incorporated herein.
6. *Self-Created.* The Zoning Board finds that the percentage of lot coverage for the garage extensions is self-created.

The Zoning Board members again determined that in the event any part of the requested variance for percentage of lot coverage pertains to any part of the garage extension structure located on the Brazee lot, that variance must be denied. The Zoning Board members further determined that the requested variance for percentage of lot coverage implicates the ponding of water on the Brazee lot, and the condition that was imposed with respect to the side yard setback variance should likewise be imposed with respect to the variance for percentage of lot coverage. The Zoning Board members then determined to grant the variance for percentage of lot coverage for private garages, subject to the following condition:

all roof gutters, downspouts, drains, pipes, or other equipment conveying stormwater runoff from the roof or any other portion of the Smith garage extensions must be collected and conveyed to the west side of the Smith lot and away from the Brazee lot so that no stormwater runoff from the roof or any other portion of the Smith garage extensions is discharged to, or entering upon, the Brazee lot. The Town of Brunswick Building Department is directed to confirm compliance with this condition.

Based on these decisions, the Zoning Board members requested attorney Gilchrist to prepare a final written decision incorporating the findings and final decisions on the variance application. Further, to timely complete and adopt the final written decision, the Zoning Board determined to schedule a special meeting for June 27, 2016 for the purpose of reviewing and adopting a final

written decision consistent with the final deliberations and decisions made at the June 20 meeting. Accordingly, a special meeting is to be noticed for June 27, 2016, commencing at 6:00pm, for the purpose of reviewing and adopting a final written decision consistent with the deliberations and decisions reached at the June 20 meeting.

The next item of business on the agenda was the area variance application submitted by Jim and Kim Wilson for property located at 3 Arminghall Drive. Jim Wilson was present. Chairman Steinbach requested Mr. Wilson to review the current proposed location for a shed at this property. Mr. Wilson reviewed that an alternative location for the shed at this property had been presented after discussion with the Brunswick Building Department, and that the shed is now located 69 feet, 3 inches from the front property line adjacent to Arminghall Drive, and is 10 feet from the principal house structure on the lot. Accordingly, there are no variance requests with respect to the setback from Arminghall Drive or the setback from the principal house structure. Mr. Wilson then explained that the shed is located 26 feet, 7 inches from the side yard lot line, but that this parcel is a corner lot, and the particular side yard line at issue is adjacent to Charnwood Lane, which also requires the front yard setback distance pursuant to the Brunswick Zoning Ordinance. Therefore, Mr. Wilson is requesting a variance from the front yard setback requirements with respect to the shed location from the lot line adjacent to Charnwood Lane. Chairman Steinbach noted that since the application had been amended, and shows a substantially different shed location than originally sought, the Zoning Board had re-noticed the public hearing and that the public hearing would be continued at this meeting. The notice of public hearing was read into the record, noting that the public hearing notice had been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties. Chairman Steinbach then opened the floor for the receipt of public comments. No

members of the public wished to provide any comments. Thereupon, Member Clemente made a motion to close the public hearing, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed. Chairman Steinbach then stated in his opinion, the current proposed location of the shed was appropriate, that no members of the neighborhood opposed the location of the shed, that the lot line requiring the need for the variance was adjacent to a public road and would not impair any adjoining neighbor, and that he did not see any impact to the town as a whole. Member Sclafani concurred that there would be no impact to neighbors, and that while the requested variance could be deemed substantial from a numeric standpoint, the fact that the setback is from a public road is a factor to be considered and she feels that this variance is not substantial due to the road location, and further that while the need for the variance is self-created, she feels that the applicant did work with the Town Building Department to find an alternate location which reduced the need for total number of variances. Member Clemente concurred, saying that a feasible alternative had been achieved between the applicant and the Building Department, and that the lot does have some issues concerning wet areas that inhibit shed locations. Attorney Gilchrist stated that the application seeks a lot line variance and area variance for a residential setting, and is a Type II action under SEQRA. Chairman Steinbach inquired whether there were any further comments. Hearing none, Chairman Steinbach made a motion to grant the area variance, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance granted without condition. The applicant is directed to coordinate with the Brunswick Building Department.

The next item of business on the agenda was the referral of the McCarty rezoning petition from the Brunswick Town Board for recommendation. Attorney Gilchrist reviewed the status of the petition seeking this rezoning, including the final Planning Board written recommendation.

The Zoning Board members reviewed the Planning Board recommendation, and concurred in its findings and favorable recommendation. Member Clemente felt that the Zoning Board should stress the considerations of traffic safety and pedestrian safety at this location, particularly since traffic on Hoosick Road is already significant and, at present, is only two lanes. Chairman Steinbach concurred, and stated that special attention needs to be paid to traffic and pedestrian safety on any specific site plan proposal for this parcel. The Zoning Board members requested attorney Gilchrist to prepare a written recommendation consistent with the Planning Board's written recommendation, and that the Zoning Board's recommendation will be reviewed and finalized at the June 27 special meeting.

Two new items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Todd Skiba for property located at 11 Walter Road. The applicant seeks a side yard setback variance with respect to installation of a 24-foot above-ground pool. The Brunswick Zoning Ordinance requires a 15-foot side yard setback, and the applicant is seeking a variance of 8 feet, to allow the pool to be installed 7 feet from the side yard lot line. The Zoning Board members reviewed the application materials, including a schematic of the lot showing the location of all structures, septic tank, and leach field, and also the proposed pool location. The Zoning Board members determined the application materials were complete, and scheduled this matter for public hearing at the July 18 meeting to commence at 6:00pm.

The second item of new business discussed was an area variance application submitted by Eric Fuller for property located at 11 Brunswick Park Drive. The applicant seeks three variances with respect to a proposed installation of a 12-foot by 21-foot shed. The applicant is seeking a rear yard setback, with the Brunswick Zoning Code requiring a 20 foot setback and the applicant

seeking a 3 foot setback. The applicant also is requesting a side yard setback variance, with the Brunswick Zoning Code requiring a 15 foot setback, and the applicant seeking an 8 foot setback. The applicant is also seeking a variance for percentage of lot coverage for accessory structures. The Zoning Board members reviewed the application materials, including a schematic of the lot showing location of the house, septic system and leach field, pool and deck, and the proposed shed location. The Zoning Board members determined the application to be complete, and scheduled a public hearing for this application to be held at the July 18 meeting commencing at 6:15pm.

The index for the June 20, 2016 meeting is as follows:

1. Smith - Area variance - 6/27/2016
2. Wilson - Area variance - Granted
3. McCarty - Recommendation on zone change petition - 6/27/2016
4. Skiba - Area variance - 7/18/2016 (public hearing to commence at 6:00pm)
5. Fuller - Area variance - 7/18/2016 (public hearing to commence at 6:15pm).

The agenda for the special meeting to be held on June 27, 2016 is as follows:

1. Smith - Area variance
2. McCarty - Recommendation on zone change petition

The proposed agenda for the July 18, 2016 meeting currently is as follows:

1. Skiba - Area variance (public hearing to commence at 6:00pm)
2. Fuller - Area variance (public hearing to commence at 6:15pm).

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS SPECIAL MEETING HELD JUNE 27, 2016

PRESENT were CHAIRMAN MARTIN STEINBACH, E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ABSENT was ANN CLEMENTE.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The first item of business on the agenda was the area variance application submitted by Daniel Smith for property located at 899 Hoosick Road. Following deliberations at the June 20 meeting, at which findings on each of the requested area variances were reviewed and final determinations concerning each variance request were made, the Zoning Board directed attorney Gilchrist to prepare a final written decision reflecting their deliberations and adoption of findings and determination on each of the variance requests. The final written decision had been prepared and distributed to the Zoning Board members for review. Chairman Steinbach reviewed the final written decision, and inquired whether any of the Zoning Board members had any questions, comments, or proposed changes to the final written decision. Hearing none, a resolution was reviewed which will adopt the final written decision as the determination on the Smith area variance application. Again, Chairman Steinbach reviewed the resolution, and asked whether any members had any questions, comments, or proposed changes to the resolution. Hearing none, Chairman Steinbach entertained a motion to adopt the resolution. The resolution was offered by Member Sclafani, and seconded by Member Shover. Each Zoning Board member voted to adopt

the resolution and final written decision, with Member Clemente absent. The resolution was unanimously adopted, and the final written decision adopted on the Smith area variance application. The Zoning Board directed attorney Gilchrist to complete the filing of the resolution and final written decision in the office of the Town Clerk.

The next item of business on the agenda was the consideration of a final written recommendation on the petition for rezoning submitted by Mark and Mary Kate McCarty for property located at 1001 Hoosick Road. The Zoning Board members reviewed a draft written recommendation prepared by attorney Gilchrist based on the Zoning Board deliberations held at the June 20 meeting, and the Zoning Board review of the Planning Board written findings and recommendation on this rezoning petition. Chairman Steinbach asked whether any Board members had questions, comments, or any proposed changes to the final written recommendation on the rezoning petition. Hearing none, Chairman Steinbach made a motion to adopt the written recommendation on the rezoning petition, which motion was seconded by Member Sclafani. The motion was unanimously approved (Member Clemente absent). The Zoning Board directed attorney Gilchrist to forward the final written recommendation of the Zoning Board concerning the rezoning petition for 1001 Hoosick Road to the Town of Brunswick Town Board for consideration.

The index to the June 27, 2016 special meeting is as follows:

1. Smith - Area variance - Final written decision adopted
2. McCarty - Referral from Town Board for recommendation - Final written recommendation adopted.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD JULY 18, 2016

PRESENT were E. JOHN SCHMIDT, WILLIAM SHOVER and CANDACE SCLAFANI.

ABSENT were CHAIRMAN MARTIN STEINBACH, and ANN CLEMENTE

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

Member Shover was identified as acting chair for the meeting.

The draft minutes of the June 20, 2016 meeting were reviewed. Upon motion of Member Sclafani, seconded by Member Schmidt, the draft minutes of the June 20, 2016 meeting were unanimously approved. The draft minutes of the special meeting held June 27, 2016 were reviewed. Upon motion of Member Sclafani, seconded by Member Schmidt, the draft minutes of the special meeting held June 27, 2016 were unanimously approved.

The first item of business on the agenda was an area variance application submitted by Todd Skiba for property located at 11 Walter Road. The applicant is seeking a side yard setback variance with respect to the installation of a 24-foot above ground pool. The applicant was present. Member Shover inquired whether there were any changes or additions to the application. The applicant indicated that there were no changes or additions to the application. Thereupon, the Zoning Board opened a public hearing on the application. The notice of public hearing was read into the record, noting that the notice had been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties. Member

Shover opened the floor for receipt of public comment. No members of the public wished to provide any comment on the application. Thereupon, a motion was made by Member Schmidt to close the public hearing, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed on the Skiba area variance application. Member Sclafani noted for the record that a letter had been received by the Zoning Board dated June 20, 2016 from Andrew Pludrzynski, 13 Walter Road, stating that he had no objection and was in favor of granting the area variance. Member Shover indicated that the Board was prepared to move forward with deliberations on the application. Attorney Gilchrist stated that the application seeks an individual lot line variance and area variance for a single-family residence, and constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. The Zoning Board members then proceeded to deliberate on the elements for consideration in connection with the area variance request. As to whether the proposed variance would create an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Sclafani stated that in her opinion, the area variance would not produce any change in the character of the neighborhood, that there are other pools in the neighborhood and that this variance would be consistent with the character of the surrounding properties, and noted that the nearby property owner at 13 Walter Road wrote a letter in favor of granting the area variance. Members Schmidt and Shover concurred in those opinions. As to whether the benefit sought by the applicant can be achieved by some other feasible method, the Zoning Board members observed that the proposed pool location avoids the location of a septic system and leach field and also an existing shed on the property. Member Sclafani observed that moving the pool to another location on the lot, in an area that would avoid the existing septic system and leach field, would likewise require some type of variance given the size of the lot. The Zoning Board members generally concurred

that any other feasible location would require a variance, and so consideration of the current variance request presented a situation where there was no other feasible alternative to obviate the need for a variance. Member Shover did inquire whether a deck was proposed for the above ground pool. The applicant stated that a deck was not proposed at this time. The Zoning Board members confirmed on the record that if a deck is sought to be constructed in the future, it may likewise require an area variance, which would require the applicant to return to the Zoning Board for further variance proceedings. As to whether the requested area variance is substantial, the Zoning Board members identified that a 15 foot setback is required, and a 7 foot setback is requested, for a variance of 8 feet from the 15 foot requirement. The general consensus was that the variance request was substantial, but that a reasonable alternative location was not available and it should not preclude considering granting the requested variance. As to whether the requested variance will produce an adverse effect on the physical or environmental conditions in the neighborhood, all members concurred that no physical or environmental impacts are anticipated. As to whether the difficulty is self-created giving rise to the need for the area variance, Member Sclafani observed that the need for the variance is self-created, but that the lot does have limitations due to the location of the house, septic system and leach field, and that while the requirement is self-created it should not preclude considering the granting of a variance in this case. The remaining Zoning Board members concurred in that opinion. Member Shover asked whether there any further comments. Hearing none, and based on the deliberation and weighing the benefit to the applicant as opposed to any detriment to the neighborhood in particular or Town in general, Member Sclafani made a motion to grant the area variance, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the requested area variance

granted to Skiba for 11 Walter Road. The applicant was directed to coordinate with the Town Building Department with respect to installation of the pool.

The next item of business on the agenda was an area variance request submitted by Eric Fuller for property located at 11 Brunswick Park Drive. The Zoning Board noted that an error had been made in the publication of the notice of public hearing for the Fuller area variance application, and that the Building Department had discussed the error with the applicant. The applicant was not in attendance. The Zoning Board members concurred that the public hearing should be rescheduled for the August 15 meeting to commence at 6:00pm.

Three items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Richard Wiley for property located at 4156 NY Route 2. The applicant was in attendance. The applicant is proposing to install a 40 foot by 40 foot steel structure for the storage of heavy equipment at 4156 NY Route 2. The property is located in the A-40 Zoning District, which allows for a total lot coverage for private garages at 3% of the total lot size. In this case, there is an existing garage on the property totaling 508 square feet, and the applicant is proposing to add a 1,600 square foot steel garage. The resulting total square footage for the private garages on the lot exceeds the 3% maximum lot coverage allowed under the Brunswick Zoning Ordinance, and an area variance is requested. The applicant indicated that he intended to use the new steel building to house a dump truck and backhoe that he now stores outside on his property. The Zoning Board reviewed the application materials, which include the application form, photographs, a plot plan/survey, and environmental assessment form. The Zoning Board members deemed the application materials to be complete, and scheduled a public hearing for this matter for the August 15, 2016 meeting to commence at 6:15pm.

The second item of new business discussed was an area variance application submitted by Michael Vickers for property located off of Krieger Lane. Attorney Gilchrist explained that the applicant is currently before the Town of Brunswick Planning Board, seeking a waiver of subdivision for an existing 5.5 acre lot which is accessed by a deeded easement off of Krieger Lane. The existing lot is identified for use as a single-family residence, but a residence has not been constructed on the lot. The applicant wishes to divide the lot into two lots, thereby creating a new building lot. Attorney Gilchrist explained that the New York Town Law requires a building lot to have a minimum of 15 feet of frontage on a public highway, and if the building lot does not have the required frontage, an application for an area variance may be submitted for consideration. Here, attorney Gilchrist explained that the proposed building lot will not have frontage on a public highway, and access will be obtained only by the deeded easement. Accordingly, the applicant has submitted an area variance request for consideration by the Zoning Board. The applicant was not present, having advised the Town Building Department that he will be out of town for an extended period on business. However, the applicant has submitted written authorization for a representative to appear for him at the further Zoning Board proceedings on the area variance application. The Zoning Board members reviewed the application materials, which include the application form, a plot plan, copy of the relevant deed, and environmental assessment form, plus written authorizations to allow a representative to represent Vickers in further Zoning Board proceedings. The Zoning Board members determined the application materials to be complete, and scheduled a public hearing for this application to be held at the August 15, 2016 meeting to commence at 6:30pm.

The third item of new business discussed was a special use permit application submitted by Daniel Czernecki for property located at 96 North Lake Avenue. Mr. Czernecki was present.

Mr. Czernecki explained that he had constructed an addition to the house located at 96 North Lake Avenue, which was primarily intended to be used as a multi-use open room in connection with the existing home, but that upon the Town Building Department inspection for the certificate of occupancy upon completion of construction, it was determined that a bathroom and efficiency-type kitchen, including a sink and small refrigerator, had been included, and determined that with the existence of a bathroom and efficiency-type kitchen, the area does require a special use permit as an apartment. Mr. Czernecki did confirm that the space would be used as an in-law apartment, and the special use permit application has been submitted for consideration. The Zoning Board members reviewed the application materials, which include the application form, survey plan showing the layout of the structures on the lot as well as layout of the addition to the home, and environmental assessment form. The Zoning Board members determined the application materials to be complete, and scheduled a public hearing for the August 15, 2016 meeting to commence at 6:45pm.

The index for the July 18, 2016 meeting is as follows:

1. Skiba - Area variance - Granted;
2. Fuller - Area variance - August 15, 2016 (public hearing renoticed to commence at 6:00pm);
3. Wiley - Area variance - August 15, 2016 (public hearing to commence at 6:15pm)
4. Vickers - Area variance - August 15, 2016 (public hearing to commence at 6:30pm)
5. Czernecki - Special use permit - August 15, 2016 (public hearing to commence at 6:45pm).

The proposed agenda for the August 15, 2016 meeting currently is as follows:

1. Fuller - Area variance (public hearing to commence at 6:00pm);
2. Wiley - Area variance (public hearing to commence at 6:15pm);

3. Vickers - Area variance (public hearing to commence at 6:30pm);
4. Czernecki - Special use permit (public hearing to commence at 6:45pm).

Zoning Board of Appeals

TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD AUGUST 15, 2016

PRESENT were CHAIRMAN MARTIN STEINBACH, E. JOHN SCHMIDT, ANN CLEMENTE and CANDACE SCLAFANI.

ABSENT was WILLIAM SHOVER.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The draft minutes of the July 18, 2016 meeting were reviewed. Upon motion of Member Clemente, seconded by Member Sclafani, the draft minutes of the July 18, 2016 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Eric Fuller for property located at 11 Brunswick Park Drive. Mr. Fuller was present. Chairman Steinbach inquired whether there were any changes or additions to the application materials. Mr. Fuller said there were no changes to the application and no additional submissions. Thereupon, the Zoning Board opened the public hearing on the Fuller area variance application. The notice of public hearing was read into the record, having been published in the Troy Record, placed on the Town signboard, posted on the Town website (noting recent technical issues with the Town website), and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. Theresa Alberelli-Naples, 23 Brunswick Park Drive, stated she was present to support the area variance application; that the back of this lot, similar to the other lots on this side of Brunswick Park Drive, back up against an electric power line corridor owned by National Grid so there is no impact concerning the rear setback; that she is not aware of any complaints concerning the installation of a

shed in the proposed location on the Fuller lot; and that the Fullers keep their property in nice shape, and the addition of the shed would add to the appearance of the property. Chairman Steinbach called for any additional public comment. Hearing none, Member Clemente made a motion to close the public hearing, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing on the Fuller area variance application was closed. Chairman Steinbach stated that the Zoning Board was prepared to proceed with consideration of the requested area variances. Attorney Gilchrist noted that the application seeks area variances in connection with a single-family residence and requests individual setback and lot line variances, which constitute a Type 2 action under SEQRA and no further SEQRA determination is required. Chairman Steinbach stated that the Zoning Board will consider all three of the requested variances as they deliberate on the elements for area variance. The three variances requested include a rear yard setback variance, a side yard setback variance, and a variance for lot coverage for accessory structures. On the issue of whether the requested variance would result in a change of the character of the neighborhood or create a detriment to nearby properties, Chairman Steinbach stated that in his opinion, none of the requested variances would result in a change in the character of the area and the addition of a shed in the rear yard is standard for a residential setting. Member Sclafani stated she visited the property, and based on her review of the surrounding properties, adding a shed to the rear yard in the proposed location would fit in with the character of the surrounding lots. Zoning Board members determined that there would not be any detrimental impact to surrounding properties as a result of granting the requested variances. As to whether there was a feasible alternative that would not require the variances, Member Clemente stated that there is a limitation in the rear yard area due to the septic system location, and that in her opinion, the proposed location was a reasonable location in the rear yard to place a shed. Chairman Steinbach stated that he did agree with the limitation based on the location of the septic system, and also felt that the size of the lot, given the presence of the existing structures, was also a factor to consider. As to whether the requested variances were substantial, the Zoning

Board reviewed the extent of the requested variances, which include a rear yard variance of 17 feet (20 required, 3 proposed); a side yard variance of 7 feet (15 feet required, 8 feet proposed); and a variance allowing an additional 27 square feet for total lot coverage for accessory structures (225 square feet allowed, 252 square feet proposed). Member Schmidt stated that in his opinion, the only requested variance that is substantial is the rear yard variance, but that the rear of this lot is adjacent to a National Grid power corridor, which affects the analysis in this case as to whether the variance is substantial. Member Sclafani agreed. Member Clemente noted that she felt that this lot was unique given the adjacent National Grid power corridor. Chairman Steinbach noted that while the amount of the rear yard setback could be considered substantial in residential setting, this situation is different because of the National Grid power corridor, and that the Zoning Board could determine that a requested variance for rear yard setback of this magnitude is substantial in other situations. As to whether the requested variances will have an adverse effect on the physical or environmental conditions in the neighborhood, Member Sclafani stated that based on her site visit, it is her opinion that there will be no adverse environmental impacts from the placement of the shed in the proposed location. Member Clemente noted that the residential lot is well landscaped, and that the shed will add to the appearance of the residential lot, and concurs that there are no adverse environmental or physical impacts from the proposed location for the shed. As to whether the difficulty requiring the area variances is self-created, Chairman Steinbach again noted that while the need for the variances can be considered self-created, this does not preclude the Zoning Board from granting the variances, and did note that given the limitations of the lot, including the location of the septic system, as well as the fact that the lot is adjacent to a National Grid power corridor, the need for the variances can be considered self-created but that factor should not preclude granting the variances in this case. Based on deliberation of these factors, Chairman Steinbach requested a motion for action on the requested area variances, noting that the Board must consider the benefit to the applicant in granting the area variances as weighed against any detriment to the neighborhood in particular or the community in

general. Based on the deliberations and considering the application materials, Member Clemente made a motion to grant each of the requested area variances on the condition that the applicant coordinate and comply with all Town of Brunswick Building Department requirements for the shed installation. Member Schmidt seconded the motion. The motion was unanimously approved, and the requested variances granted on the Fuller application.

The next item of business on the agenda was area variance application submitted by Richard Wiley for property located at 4156 NY Route 2. Mr. Wiley was present. Chairman Steinbach inquired whether there were any changes to the application, or any additional application documents. Mr. Wiley stated that there were no changes to the application, and no further submissions. Thereupon, the Zoning Board opened the public hearing on the requested area variance for Richard Wiley. The notice of public hearing was read into the record, having been published in the Troy Record, placed on the Town signboard, posted on the Town website (noting recent technical issues with the Town website), and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. No members of the publish wished to provide comment on the application. Member Scalfani made a motion to close the public hearing, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing on the Wiley area variance application was closed. The Zoning Board noted that this application seeks a variance for percentage of lot coverage for a private garage, with the applicant proposing to install a 40-foot by 40-foot steel garage for the purpose of housing a dump truck, backhoe, and other equipment that is currently being stored outside on the property. Chairman Steinbach noted that the Zoning Board was ready to proceed with deliberation on the application. Attorney Gilchrist noted that the application seeks an area variance in connection with a residential use, and therefore constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. Member Clemente had two questions concerning the application. Member Clemente asked whether the photographs submitted with the application materials were accurate, and that the steel structure to be

installed would look like the photographs. Mr. Wiley stated that the photographs were accurate, and the only difference would be the color of the structure. Mr. Wiley confirmed that the structure will be one story, and the entrance to the garage would be on the rear side. Member Clemente asked whether there was another portable storage container already on the property. Mr. Wiley confirmed that there was a portable container on the property, and that he would be keeping the portable container on the lot. Member Clemente inquired of Ms. Guastella whether the portable container was calculated into the requested variance for lot coverage for private garages. Ms. Guastella stated that the container is not included within the calculation because the variance is with respect only to percentage of lot coverage by private garages, and that the portable container does not constitute a private garage. Chairman Steinbach then stated the Zoning Board should proceed to consider the elements for the area variance request. As to whether the requested variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Schmidt stated that he had visited the site, and that from the public road, he could not see the back of the lot area where the steel structure would be placed, and you could not see that location unless you walked down to the end of the driveway. Member Schmidt stated that he did not think the placement of this steel structure would change the character of the neighborhood or create a detriment, as no one will be able to see the steel structure from the public road. Member Sclafani stated she also visited the site, and that there is a lot of equipment currently stored outside on the yard, and that having the steel building on the property to house this equipment will actually improve the appearance of the lot. Member Clemente stated that the lot was somewhat uniquely located, as it was adjacent to the parking lot for the medical building on Route 2, and also adjacent to the Whalen lot that has buildings on it in that location, and Member Clemente concludes that the placement of the steel structure would fit into the character of that area and actually improve the appearance since the equipment will now be housed in a steel building. As to whether there is a feasible alternative available to the applicant, Member Schmidt stated that the only alternative was to leave the equipment

outside on the property, which Member Schmidt did not feel was a viable alternative, and that Mr. Wiley would need a steel structure big enough to house the dump truck, backhoe, and other equipment. Chairman Steinbach noted that putting the dump truck, backhoe, and other equipment inside a steel structure will actually be better for the neighbors from a visual perspective. As to whether the requested variance is substantial, it is noted for the record that the Brunswick Town Code allows 3% lot coverage for private garages, which in this case would allow 928.74 square feet for a private garage, whereas the proposed steel structure is 1,600 square feet. Chairman Steinbach stated that this variance will be substantial, but that with the proposed location to the rear of the lot and the overall size of the lot, the placement of the steel building will not be totally out of line with the area, and that the screening and other visual appearance of the lot make the situation not as pronounced as the mere numbers suggest. Member Schmidt stated that he did feel the variance request was substantial, but the fact that he could place the 1,600 square foot steel building on the lot without the need for any other variance shows that it can fit appropriately on the lot, and that the limitation on the percentage of lot coverage for private garages is not as pronounced with respect to this particular lot. As to whether the requested variance would result in an adverse effect upon the environmental or physical conditions in the neighborhood, Member Sclafani stated that she felt housing the equipment in the steel building will actually improve the visual aspect of the lot from the neighbors' perspective, and felt there was no environmental impact. Chairman Steinbach made a note that the application documents confirm that there are no drains proposed for the floor of the garage, that he did not feel there would be any stormwater runoff effects, and concluded that there were no adverse environmental or physical effects from the application. As to whether the need for the variance is self-created, Chairman Steinbach noted again that the need is self-created, but that in this case it should not preclude consideration of granting the variance. Chairman Steinbach then said the Zoning Board should entertain action on the variance application, and that the Zoning Board should weigh the benefit to the applicant as opposed to any detriment to the neighborhood in particular and community

at large. Member Sclafani made a motion to grant the requested variance for lot coverage for private garages, upon the condition that the applicant coordinate and comply with all Town of Brunswick Building Department requirements in connection with installation of the structure. Member Schmidt seconded the motion. The motion was unanimously approved, and the area variance for percentage of lot coverage for private garages granted for the Wiley lot.

The next item of business on the agenda was the area variance application submitted by Michael Vickers for property located off Krieger Lane (Tax Map No. 83.-2-4.4). Mr. Vickers was not present, but the application record does include written authorization to have Larry Broderick represent Mr. Vickers at this meeting. Larry Broderick was in attendance. Chairman Steinbach asked whether Mr. Broderick was familiar with the application. Mr. Broderick stated that he was familiar with the application. Chairman Steinbach asked whether there were any changes to the application, or any additional submissions. Mr. Broderick stated that there were no changes and no additional submissions. Chairman Steinbach asked whether there were any questions by the Zoning Board members. Member Schmidt questioned whether the right-of-way owned by Vickers follows the driveway that is now leading from Krieger Lane to the Dayton home. Mr. Broderick thought that the driveway for the Dayton house was located within the 40-foot right-of-way. Member Schmidt asked whether the width of the blacktop driveway to the Dayton house is in the center of the 40-foot right-of-way, or whether it is off-center. Mr. Broderick did not know that information. Member Schmidt was concerned that construction vehicles that may access the Vickers property in connection with any approved subdivision or building lot would damage the existing driveway, and questioned whether there was any driveway maintenance agreement between Vickers and Dayton. Mr. Broderick did not have any of the particulars regarding the Dayton driveway or any driveway maintenance agreement. The Zoning Board then opened the public hearing on the Vickers area variance application. The notice of public hearing was read into the record, having been published in the Troy Record, placed on the Town signboard, posted on the Town website (noting recent technical issues with the Town

website), and mailed to owners of adjacent property. Chairman Steinbach then opened the floor for the receipt of public comment. Mrs. Flora Lee Ashdown stated that she owns the property immediately adjacent to Vickers, and that she also has ownership interest in the same 40-foot right-of-way that provides access to the Dayton lot, as well as provides access to the Vickers lot. She said that her property, Vickers property, and the Dayton property all share the same easement. Mrs. Ashdown confirmed that there is a house on the Dayton lot, but that the Vickers lot is vacant, and her property is 18 acres of wooded land. Mrs. Ashdown stated that there are no buildings on her property, but she does like to hike her 18 acres. Chairman Steinbach asked whether there was any road whatsoever leading from the Dayton driveway back to the Vickers lot and ultimately back to Mrs. Ashdown's property. Mrs. Ashdown stated that there is no roadway past the Dayton driveway, but that there was probably an old farm road that went back to her property in the past. There were no further public comments at this time. Chairman Steinbach noted that there were a number of factors that needed to be considered by the Zoning Board in connection with this area variance application. Attorney Gilchrist reviewed with the Zoning Board members the need for the area variance in this case. Mr. Vickers owns a 5.5-acre lot, and has filed an application for subdivision with the Brunswick Planning Board, seeking to divide the 5.5 acres into two building lots. According to New York Law, each building lot is required to have frontage on a public road, the primary reason for which is so that the lot has access by emergency vehicles. New York Law also provides that if access to the building lot is by private easement or right-of-way only, that an application for an area variance can be made to the Zoning Board, which has resulted in the current application by Vickers. Attorney Gilchrist noted that the Zoning Board should consider a number of factors, including adequate emergency vehicle access, drainage, utilities, necessary width of any roadway, and also an enforceable road maintenance agreement to ensure that the road is properly maintained in the future since this will not be a Town road but rather a private road/driveway. Attorney Gilchrist also noted that in the event the Zoning Board did grant the area variance, Mr. Vickers is still required to obtain relief from the

Brunswick Town Board as the additional building lot is in excess of the maximum number of lots on a dead end or cul-de-sac road under the Brunswick Town Code, and that it is the Brunswick Town Board that will need to address that issue. Chairman Steinbach stated that the Board needs additional information, most particularly that the Building Department should coordinate with the appropriate fire department to view the site and give the Zoning Board information as to what is needed for adequate emergency vehicle access. Member Schmidt also stated that he wanted additional information as to the exact location of the 40-foot private right-of-way, that it should be shown on a survey or map, including the location of the Dayton driveway within that 40-foot right-of-way. Ms. Guastella stated that she would coordinate with the applicable fire department to get the information concerning emergency vehicle access, and also noted that when Mr. Vickers acquired his lot there were percolation tests that were done in the early 1990's, but that updated percolation tests would be required in connection with any building lot that would need to be reviewed by the Rensselaer County Health Department for adequate septic. The Zoning Board determined to keep the public hearing open until the additional information is provided, and has scheduled the public hearing to continue at its September 19 meeting, with the public hearing to continue at 6:30pm.

The next item of business on the agenda was the special use permit application submitted by Daniel Czernecki for property located at 96 North Lake Avenue. The applicant seeks a special use permit for an in-law apartment at this property. Daniel Czernecki was present. Chairman Steinbach asked whether there were any changes or additional submissions concerning the application. Mr. Czernecki stated there were no changes and no additional submissions. Chairman Steinbach inquired whether any Zoning Board members had questions concerning the application. Hearing none, the Zoning Board opened the public hearing on the special use permit application. The notice of public hearing was read into the record, having been published in the Troy Record, placed on the Town signboard, posted on the Town website (noting recent technical issues with the Town website), and mailed to owners of adjacent properties. Chairman Steinbach then opened the floor for the receipt of

public comment. There were no members of the public who wished to comment on the application. Chairman Steinbach wanted it confirmed on the record that the in-law apartment was used only by family members. Mr. Czernecki stated that the in-law apartment was for use by his father-in-law, who spends six months in New York and six months in Florida. Member Sclafani noted that the plans show no separate entrance for the in-law apartment from the exterior of the house, and that the only access to the in-law apartment is through the main entrance to the home. Chairman Steinbach again asked whether any members of the public wished to comment on the application. Hearing none, Member Sclafani made a motion to close the public hearing, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing closed on the Czernecki special use permit application. Chairman Steinbach noted that the Zoning Board should proceed to consider the application on its merits. Attorney Gilchrist stated that the application is subject to SEQRA review, and that the Zoning Board must review the environmental assessment form and application documents to make its SEQRA determination. Chairman Steinbach stated that based upon his review of the application documents and the environmental assessment form, it was his opinion that there were no potential significant adverse environmental impacts from the issuance of the special use permit in this case, and offered a motion to adopt a negative declaration under SEQRA. The motion was seconded by Member Clemente. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, the Zoning Board reviewed the considerations for a special use permit in this case. Upon review of the application materials, the Zoning Board members concurred that there were adequate transportation facilities, water supply, fire and police protection, and wastewater disposal services in connection with this property and the addition of the in-law apartment; that there was adequate parking in connection with the proposed in-law apartment; Member Clemente noted that the construction of the in-law apartment was done very well, and in all likelihood improved the value of the property and the neighborhood as a whole, and that the addition to the house was consistent with the general neighborhood character and constitutes a great

improvement to the neighborhood, with the remaining Zoning Board members concurring; that the use of the addition for an in-law apartment purpose would not result in any undue traffic congestion or create any traffic hazards, with Chairman Steinbach noting that there is already moderately heavy traffic on North Lake Avenue, but that this in-law apartment is going to be used on a seasonal basis. Chairman Steinbach concluded that the addition of one part-time resident at this location in the in-law apartment is not significant at all, that the property owner has made a significant investment in the property that fits into the overall character of the neighborhood, and that the addition of this part-time resident would not be noticeable at all. Member Schmidt felt it was significant that there was only one ingress/egress access to the house, and that the in-law apartment did not have a separate entrance to the exterior, but felt that the Zoning Board should limit the special use permit to an in-law apartment only and not allow any for-profit rental. The Zoning Board members concurred in that condition. Chairman Steinbach asked if there was any further discussion. Hearing none, Chairman Steinbach made a motion to approve the special use permit upon the condition that the apartment be used for in-law purposes only and is not approved for a for-profit rental unit. Member Sclafani seconded the motion subject to the stated condition. The motion was unanimously approved, and a special use permit granted subject to the stated condition. Chairman Steinbach directed the applicant to close out the Certificate of Occupancy process with the Town of Brunswick Building Department, and also stated that in the event the property owner requested a separate entrance or to convert the addition to a for-profit rental unit, the owner would need to reapply to the Town of Brunswick and seek a new special use permit.

There were two items of new business discussed.

The first item of new business discussed was an area variance application submitted by Christine and Michael Colucci for property located at 4 Plum Road. The applicant seeks to install a 16-foot by 20-foot deck from the rear of the house, in a location which requires a rear yard setback variance. The required rear yard setback is 50 feet at this location, and a 42-foot setback is proposed,

requiring a variance of 8 feet. Michael and Christine Colucci were present. Chairman Steinbach requested the applicant to generally review the application for the Zoning Board members. Mrs. Colucci stated that they are seeking to construct an attached deck to the rear of their house. Mrs. Colucci stated that she has spoken with the neighbor to the rear, and that they have no objection to the construction of the deck in the proposed location, and handed up a written letter from Anthony and Sarah Conyers, 16 Valley View Drive, stating that they have no opposition to the variance request. Chairman Steinbach received the written letter from the Conyers. The Zoning Board members generally concurred that the application materials were complete, with Chairman Steinbach confirming that the application fees had been paid. The Zoning Board concurred that the matter was complete for scheduling the public hearing. The public hearing on the Colucci area variance application will be held on September 19, 2016 at 6:00pm.

The second item of new business discussed was an area variance application submitted by Thomas Fitzgerald for property located at 8 Brook Hill Drive. Mr. Fitzgerald was in attendance. The application seeks a side yard setback variance. At this location, a side yard setback of 25 feet is required, and a setback variance allowing a 10.2-foot setback is requested, resulting in a 14.8-foot variance. Mr. Fitzgerald explained that a shed is already constructed and existing in this location on his lot, and that he had obtained a building permit for the installation of the shed at that location. However, as there is proposed construction on the lot adjacent to Mr. Fitzgerald, he had his survey confirmed in terms of his lot line, and only upon the supplemental survey did Mr. Fitzgerald learn that his original survey was not accurate and the builder had not placed the house on the building lot in the location which Mr. Fitzgerald thought it would be. Mr. Fitzgerald handed up a series of photographs depicting his lot, including the house and the shed location. Mr. Fitzgerald stated that he was unaware of the incorrect survey previously provided to him, had obtained a building permit to put the shed in a location based on the inaccurate survey, and that he was now seeking an after-the-fact variance based on his updated, correct survey. Chairman Steinbach asked whether Mr. Fitzgerald

consented to the Zoning Board members going out to the house and taking a look for themselves. Mr. Fitzgerald provided consent. The Zoning Board members generally concurred that the application materials were complete, with Chairman Steinbach confirming that the application fee had been paid. The Zoning Board scheduled a public hearing for the Fitzgerald area variance application, to be held at the September 19 meeting to commence at 6:15pm.

The index for the August 15, 2016 meeting is as follows:

1. Fuller - Area variances - Granted subject to condition
2. Wiley - Area variance - Granted subject to condition
3. Vickers - Area variance - Public hearing to be continued on September 19, 2016 at 6:30pm
4. Czernecki - Special use permit - Granted subject to condition
5. Colucci - Area variance - September 19, 2016 (public hearing to commence at 6:00pm)
6. Fitzgerald - Area variance - September 19, 2016 (public hearing to commence at 6:15pm).

The proposed agenda for the September 19, 2016 meeting currently is as follows:

1. Colucci - Area variance (public hearing to commence at 6:00pm)
2. Fitzgerald - Area variance (public hearing to commence at 6:15pm)
3. Vickers - Area variance (public hearing to continue at 6:30pm).

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD SEPTEMBER 19, 2016

PRESENT were CHAIRMAN MARTIN STEINBACH, E. JOHN SCHMIDT, ANN CLEMENTE and CANDACE SCLAFANI.

ABSENT was WILLIAM SHOVER.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the August 15, 2016 meeting. Two corrections were noted. On page 4, at line 14, “publish” is corrected to “public”. On page 8, at line 1, “property” is corrected to “properties”. Subject to the stated corrections, Member Clemente made a motion to approve the draft minutes of the August 15, 2016 meeting, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the draft minutes of the August 15, 2016 meeting were unanimously approved with the stated corrections.

The first item of business on the agenda was the area variance application submitted by Christine and Michael Colucci for property located at 4 Plum Road. The applicants seek a rear yard setback variance with respect to the construction of a deck on the property. Christine and Michael Colucci were present. Chairman Steinbach inquired whether there were any changes or additions to the application. Mrs. Colucci stated there were no changes or additions to the application. Thereupon, the Zoning Board opened a public hearing on the application. The notice of public hearing was read into the record, with that notice published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties.

Chairman Steinbach opened the floor for receipt of public comment. No members of the public wished to provide any comment on this application. Member Sclafani did note that a letter had been received into the record from Anthony and Sarah Conyers, 16 Valley View Drive, which is located immediately to the rear of the Colucci parcel, stating that the Conyers had no opposition to the requested variance. Hearing no further comment from the public on the application, Member Clemente made a motion to close the public hearing on the Colucci area variance application, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed. The Zoning Board then proceeded to deliberate on the area variance application. Attorney Gilchrist noted that the application seeks an area variance in connection with a single-family residence, and constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. The Zoning Board then proceeded to review and deliberate on the elements to be considered in connection with the area variance request. The Zoning Board determined that the requested variance will not produce a change in the character of the neighborhood nor create a detriment to nearby properties, finding that decks constructed to the rear of homes are consistent with the neighborhood; that given the size of the lot and the location of the house on the lot, the applicant did not have a feasible alternative to construct the desired size deck to the rear of the home; that the requested variance was not substantial, as a 50-foot rear yard setback is required and a 42-foot rear yard setback is proposed; that the requested variance would not result in any adverse physical or environmental impact, noting that the deck materials proposed are composite materials that will not require any staining or maintenance in the future and that in terms of the visual assessment, the neighbor located immediately to the rear has no opposition to the requested variance; and that while the need for the requested variance can be deemed to be self-created, this element should not preclude the grant of the variance in this case. Chairman

Steinbach noted that in consideration of these elements, and in balancing the benefit to the applicant as opposed to any detriment to the neighborhood, he would be in favor of granting the variance as he feels the addition of the deck would have a positive effect on the neighborhood, enhance the quality of life for the homeowners, and that there are no impacts that he can see from construction of the deck in the requested location. Member Sclafani agreed, and further made a motion to grant the requested area variance allowing the construction of deck at 4 Plum Road with a 42-foot rear yard setback. The motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance granted. Mr. and Mrs. Colucci were directed to coordinate with the Town Building Department on necessary permits for the deck construction.

The next item of business on the agenda was an area variance application submitted by Thomas Fitzgerald for property located at 8 Brook Hill Drive. The applicant seeks a side yard setback variance with respect to an existing shed on the property. Mr. Fitzgerald was present. Chairman Steinbach inquired whether there were any changes or additions to the application. Mr. Fitzgerald stated there were no changes or additions to the application. Thereupon, the Zoning Board opened the public hearing on the application. The notice of public hearing was read into the record, with the notice being published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. Kathy Romano, 15 Brook Hill Drive, stated she had no opposition and was in favor of the Zoning Board granting the requested variance. Jim Gardner, 8 Brook Hill Drive, also stated he had no opposition to granting the area variance and was in favor of the application. Henry Reiser, of Reiser Builders Inc., stated he was the builder of the house on Mr. Fitzgerald's lot, and that he also owned lots on each side of Mr. Fitzgerald's property, and that he was in favor of the Zoning Board granting the requested variance. Chairman

Steinbach asked whether any members of the Zoning Board had questions. Member Shover had a question concerning the lot layout shown on a map and the narrative submitted in connection with the application documents. Upon explanation by Mr. Fitzgerald, Member Shover indicated he clearly understood the variance request. Hearing no further public comment, Member Clemente made a motion to close the public hearing on the Fitzgerald area variance application, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed. Chairman Steinbach then summarized the matter, stating that Mr. Fitzgerald had initially applied for a building permit for the shed installation based on a survey map that he had in his possession at that time, and that the appropriate building permit had been issued showing appropriate setback from the side yard lot line. However, Mr. Fitzgerald determined subsequently that the prior survey map on which he relied was not correct. He had an updated survey map prepared, which showed the correct lot line, resulting in the need for a side yard setback for the shed which had already been constructed and completed pursuant to the previous building permit. The Zoning Board understood the application, including the need for the variance, and proceeded to deliberate on the application. Attorney Gilchrist stated that the application seeks an area variance in connection with a single-family residence, and constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. Regarding the elements of the requested area variance, the Zoning Board determined that the requested variance will not impair the character of the neighborhood nor create a detriment to nearby properties, as the shed has been installed for some time and has not resulted in any complaints or off-site impacts, that there will be no visual impact from the shed, that the shed fits nicely on the lot in relation to the house, and that the overall appearance of the shed and the lot in general is very good, and that the shed is consistent with the character of the Brook Hill neighborhood; that given the facts of this matter, a

feasible alternative is not available to the applicant other than moving and relocating the shed on the lot, which in this case does not seem warranted, particularly since the current location of this shed has neighbor support; that the extent of the requested variance could be deemed substantial simply based on the numbers, but that the facts of this matter, including the prior incorrect survey map on which the property owner and the Building Department relied in issuing a building permit for the construction of the shed, warrants that the requested variance in this case should not be deemed substantial; that there will be no adverse physical or environmental impacts from the requested variance; and that in this case, based upon the facts, the need for the variance is deemed not to be self-created, as all parties were previously relying on a survey map which proved to be incorrect. Chairman Steinbach noted that given the facts of this matter—that the property owner had appropriately applied for a building permit prior to constructing and installing the shed, the current need for the variance given an updated and corrected survey map, that the neighbors are supporting the application, that it is consistent with the neighborhood, and that the structure has been well-maintained—he would be in favor of granting the variance. Member Sclafani agreed, and offered a motion to grant the requested area variance, which motion was seconded by Member Clemente. The motion was unanimously approved, and the area variance granted.

The next item of business on the agenda was the area variance application submitted by Michael Vickers for property located off Krieger Lane (Tax Map No. 83.-2-4.4). The Zoning Board was continuing a public hearing on this application. Larry Broderick, representative of Mr. Vickers, was present, stating that Mr. Vickers is still out of town on business and had filed a written approval to have Mr. Broderick represent him at this meeting. Mr. Broderick confirmed that there were no changes in the application. The Zoning Board reiterated that Member Schmidt had requested a map or survey of the property showing the location of the 40-foot wide right-of-way

off Krieger Lane, the location of the existing driveway leading to the existing home, and the location of a proposed roadway leading to the Vickers property. Mr. Broderick confirmed that the existing driveway is located on the left side of the 40-foot right-of-way, but that a map or survey had not been prepared. Chairman Steinbach also noted that the Building Department had coordinated with the Fire Department to review the location of any proposed road, and that the Fire Department will be preparing a report that will be submitted to the Zoning Board, but that has not yet been received by the Zoning Board. The Fire Department was requested to review the property in terms of necessary emergency vehicle access, including road width, road specifications to support the weight of emergency vehicles, turning radius and turnaround, and any other issues which the Fire Department deemed relevant on the matter. Member Shover noted that he had visited the site, and had several questions regarding the proposal, including the location of any new proposed roadway in relation to where the proposed lots are located, and the relationship to the existing driveway of the existing home. Chairman Steinbach noted that several issues exist; that a map or survey needs to be submitted by the applicant showing the location of the 40-foot wide right-of-way, as well as coordination with the Fire Department to obtain the report concerning emergency vehicle access, and information concerning the specifications of any proposed road. Attorney Gilchrist stated that it is important for the Zoning Board to understand the proposed road leading to the proposed building lots, including construction specifications, drainage, width, as well as any enforceable private road maintenance agreement as this road is not proposed to be dedicated as a public road. Chairman Steinbach confirmed that all of this information is necessary on the record for the Zoning Board to consider the area variance application. This matter has been adjourned to the October 17 meeting, for the receipt of the requested additional information and continuation of the public hearing.

Three items of new business were discussed.

The first item of new business discussed was a sign variance application submitted by Sign Studio, Inc. on behalf of Rensselaer Honda for property located at 770 Hoosick Road. Sarah Manley of Sign Studio, Inc. was present for the applicant. Ms. Manley stated that the requested sign variance is in connection with the renovation of the Rensselaer Honda facility at 770 Hoosick Road, that two sign permits had already been granted for installation of one exterior wall sign and one free-standing sign, and that the sign variance application is to add five additional wall signs to the exterior of the building. Ms. Manley stated that the total square footage of all signs is within Code limits, but that the Code limits the number of signs to a total of two signs, and that Rensselaer Honda is seeking to have a total of seven signs. Ms. Guastella confirmed that the total square footage is compliant with Town Code requirements, but that a variance is needed for the total number of signs. Member Clemente confirmed the total number of signs and the content of those signs on the application documents. The Zoning Board members generally reviewed the application materials and found them to be complete, and the application fees have been paid. The Zoning Board determined to schedule and hold a public hearing on this application. The public hearing will be held at the October 17 meeting to commence at 6:00pm.

The second item of new business discussed was a referral from the Brunswick Town Board for recommendation on a proposed amendment to the Brunswick Square Planned Development District, with respect to a proposed Bank of America ATM kiosk in the parking lot of the Brunswick Square Plaza. Paul Mutch, P.E., of Stonefield Engineering, was present for the applicant. Mr. Mutch went through the application proposal, in which Bank of America seeks an amendment to the existing PDD approval to allow the installation of a free-standing, stand-alone ATM kiosk in the parking lot. Mr. Mutch stated that a bank as a primary use is allowed in the

Brunswick Square Planned Development District, and that ATMs are a permitted accessory use, but that the PDD legislation did not allow a stand-alone ATM kiosk as a primary permitted use in the Brunswick Square Plaza. Mr. Mutch went through the specifics of the proposed ATM kiosk, which is proposed to be 11 feet in height, 8.5 feet wide, and 2 feet deep. Mr. Mutch reviewed the signage and color for the proposed kiosk. Mr. Mutch reviewed the lighting for the canopy as well as the lighting around the kiosk that is required in connection with New York State requirements. Mr. Mutch reviewed the location of the kiosk in the parking lot, which is located approximately 12 feet from the front property line along the Hoosick Road corridor. Mr. Mutch stated that nine parking spaces would be removed as a result of the kiosk installation, and a dedicated drive-thru lane would be provided with appropriate curbing. Mr. Mutch stated that the ATM location is important for Bank of America, since the kiosk must be visible from the Hoosick Road corridor for Bank of America customers, particularly in light of the fact that additional signage on the mall pole sign will not be added, and that the customers need to see the Bank of America signage directly on the kiosk. Mr. Mutch also explained that the location is designed to be in the lowest turn-over spaces in the parking lot, to eliminate any conflict with existing parking and traffic flow as well as pedestrian traffic. Mr. Mutch then reviewed the length of the drive-thru lane, which allows for a three-car queue, which is sufficient for the anticipated usage of the ATM kiosk. Mr. Mutch stated that limited greenspace would be removed in connection with the kiosk construction, but the greenspace and trees directly adjacent to the Hoosick Road corridor would remain. Mr. Mutch reviewed the specifics of the additional pole lighting which he indicates is required pursuant to New York State regulation. Mr. Mutch concluded that the kiosk fits into the character of the commercial area, is a benefit to the site, and will not create a detriment to the area or customers in the Brunswick Square Plaza. Chairman Steinbach discussed the issue of the number of parking

spaces in the Brunswick Square Plaza parking lot, with Mr. Mutch stating that in his opinion, the parking spaces provided were significantly greater than the site would otherwise call for, so that the elimination of nine spaces will be insignificant. Chairman Steinbach inquired about the hours of operation for the kiosk. Mr. Mutch stated that the kiosk would be 24/7, so that the lighting around the kiosk would be on all night. Member Shover asked about the lighting impact on the Hoosick Road corridor. Mr. Mutch stated that the existing foot-candles of an existing pole light for the parking lot was 3 foot-candles at the property line, and that the foot-candles would raise to 4.5 foot-candles with the installation of the additional kiosk lighting, but that the light remains less than 1 foot-candle in the Hoosick Road corridor. Member Sclafani asked about the impact of the kiosk location on an existing bus stop in the plaza parking lot. Member Sclafani noted that many people use the bus stop location to then cross the street to go to Burger King or Dunkin Donuts, and that she could easily see people using the ATM kiosk as a walk-up facility as well. Mr. Mutch stated that signage could be installed to indicate that walk-up usage is not allowed. Member Schmidt did have a concern that with the number of people that use the bus stop, even with signage the kiosk could become a pedestrian safety issue. Member Schmidt also noted that the County referral did provide a comment that there could be an existing CDTA Park & Ride location in proximity to the proposed kiosk. Mr. Mutch stated that he would look into any existing agreement for Park & Ride with CDTA at that location. The Zoning Board determined to continue discussion and deliberation on this matter at the October 17 meeting for purposes of completing their recommendation to the Town Board. This matter is placed on the October 17 agenda.

The third item of new business discussed was the special use permit application submitted by Cellco Partnership d/b/a Verizon Wireless for a major telecommunications facility located proximate to the intersection of Creek Road and Menemsha Lane. David Brennan, Esq., of Young

Sommer, was present representing the applicant, together with an RF Engineer and Site Acquisition Specialist for the applicant. Mr. Brennan stated that he was present to introduce the proposed project to the Zoning Board, knowing that the Zoning Board would need adequate time to review the application materials and also consider retaining an engineering firm as review engineer on the application. Mr. Brennan stated that the specific location for the proposed tower is 275C Menemsha Lane, to be located on an 86-acre parcel owned by Zucky. The proposed access to the cell tower location is directly off Creek Road, via a right-of-way over a second parcel owned by Zucky connecting to the location of the proposed cell tower. A 50-foot wide utility and access easement is proposed, in which a 16-foot gravel driveway would be constructed. Mr. Brennan stated that a 100-foot by 100-foot lease area is proposed for the cell tower, in which a 75-foot by 75-foot fence enclosure would be located to house the base equipment and cell tower. The tower is proposed to be 150 feet high, with a 4-foot lightning rod. Mr. Brennan explained the proposed location of the tower on the parcel, and how the required setback from existing residences impacted the final proposed tower location. Mr. Brennan explained that the parcel is located adjacent to a residential neighborhood located off Menemsha Lane at Eagle Ridge, and that the Town telecommunications law requires a 750-foot setback from existing residences. The elevation of the property in proximity to the residences is higher than it is on the balance of the Zucky parcel, which generally slopes down and away from the residential neighborhood. Mr. Brennan stated that if the proposed cell tower was located closer to the residences in Eagle Ridge, the tower height could be reduced since the elevation is greater, but a variance would be required to allow construction of the tower closer than 750 feet from existing residences. Mr. Brennan then explained that the tower height needed to be increased if the 750-foot setback from residences is maintained, which is the current proposal of a 150-foot tower. Mr. Brennan explained further that

the cell tower could be located to increase the distance from the residences, but in turn the elevation decrease would necessitate an even taller tower, and that there were certain service impairments that would result if the tower was located further away from the residences than 750 feet. Mr. Brennan concluded that when considering the setback requirements and ground elevations, the current location of the tower is proposed to be 750 feet from existing residences, with a tower height of 150 feet. Mr. Brennan then explained that this proposed tower location is in the R-25 Zoning District, as opposed to the A-40 Agricultural District. Mr. Brennan stated that in this case, the Eagle Ridge residential community is located in the A-40 Zoning District, but the balance of the Zucky property, on which agricultural use is currently in place, is zoned R-25. Because of the R-25 Zoning designation, a use variance will be required in connection with siting the tower at the proposed location. Mr. Brennan then generally reviewed technical information contained in the application documents. The Zoning Board members discussed the option of retaining an outside engineering consultant to assist in the review of the application. The Zoning Board determined that technical support in review of the application is needed, that the Town does not employ any engineer that could provide the required technical review of the application, and determined to retain an outside engineering firm for purposes of assisting in the review of this special use permit application. Member Shover made a motion to retain the Laberge Group as designated engineering review consultants on this application, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the Laberge Group retained as designated review engineer for this application. It was determined that the application materials will be forwarded to the Laberge Group for purposes of initial review and preparation of an estimate for review fees, with the applicant then establishing a required escrow at the Town for engineering review fees. This

matter is tentatively placed on the October 17 agenda, subject to the extent of the review that can be completed by the Laberge Group prior to that date.

The index for the September 19, 2016 meeting is as follows:

1. Colucci - Area variance - Granted;
2. Fitzgerald - Area variance - Granted;
3. Vickers - Area variance - October 17, 2016 (public hearing to continue);
4. Sign Studio, Inc/Rensselaer Honda - Sign variance - October 17, 2016 (public hearing to commence at 6:00pm);
5. Bank of America - Brunswick Square Planned Development District Amendment Recommendation - October 17, 2016;
6. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance - October 17, 2016

The proposed agenda for the October 17, 2016 meeting currently is as follows:

1. Sign Studio, Inc/Rensselaer Honda - Sign variance (public hearing to commence at 6:00pm);
2. Vickers - Area variance (public hearing to continue);
3. Bank of America - Brunswick Square Planned Development District Amendment Recommendation;
4. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD OCTOBER 17, 2016

PRESENT were E. JOHN SCHMIDT, ANN CLEMENTE, WILLIAM SHOVER and CANDACE SCLAFANI.

ABSENT was CHAIRMAN MARTIN STEINBACH.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

Member Clemente was chosen as Acting Chairman for the meeting by consensus.

Member Clemente reviewed the agenda for the October 17 meeting as posted on the Town signboard and on the Town website.

The Zoning Board members entertained discussion with several Town residents concerning the agenda item on the special use permit application submitted by Cellco Partnership d/b/a Verizon Wireless for construction of a new major telecommunications facility. Procedure concerning the application was discussed, including the requirement for a public hearing on the application which will be scheduled for a future date.

The draft minutes of the September 19, 2016 meeting were reviewed. One correction was noted at page 1, correcting the fact that Member Shover was present and participated at the September 19 meeting. Subject to that correction, Member Sclafani made a motion to approve the draft minutes of the September 19 meeting, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the September 19, 2016 minutes approved as corrected.

The first item of business on the agenda was the sign variance application submitted by Sign Studio, Inc. on behalf of Rensselaer Honda for the Rensselaer Honda dealership located at 770 Hoosick Road. Sarah Manley of Sign Studio, Inc. was present on the application. The applicant is seeking a sign variance in connection with the renovation of the Rensselaer Honda facility to add five additional wall signs to the exterior of the Rensselaer Honda facility building. The Zoning Board opened the public hearing on the application. The notice of public hearing was read into the record, with the notice having been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of properties within 500 feet of the project site. Member Clemente opened the floor for receipt of public comment. No members of the public wished to comment on the application. The Zoning Board also noted that no letters had been received concerning the application. Member Shover asked whether the pylon sign was going to be the same size and location as the previous sign at the Rensselaer Honda dealership. Ms. Manley stated that the new sign would be a replacement in kind. Member Clemente asked about the directional signs, and inquired whether they could be turned off during non-business hours. Ms. Manley stated that the directional signs could be turned off when the dealership is not in operation. Member Sclafani noted that the total square footage for signs at this location, including the five additional signs being requested, are still within the total square footage allowed for signs at this location. It was confirmed that the total square footage is in compliance with the Town sign law, and the variance deals only with the total number of signs at this facility. It is confirmed that the Town sign law allows two signs, and this variance seeks an additional five exterior wall signs, including directional signs for the service area. Hearing no further comment, and no further questions from members of the Zoning Board of Appeals, Member Sclafani made a motion to close the public hearing on the Sign Studio/Rensselaer Honda sign variance application, which motion was seconded by Member Shover.

The motion was unanimously approved, and the public hearing closed. Member Clemente stated that the Zoning Board of Appeals was in a position to proceed to deliberation on the application. Attorney Gilchrist stated that the Zoning Board of Appeals must first make its determination of environmental significance under SEQRA. Member Sclafani stated that in her opinion, no significant adverse environmental impact would result from this action pertaining to total number of signs at this facility, as the general area is already commercial in nature including a number of commercial signs, and that this specific location has been a car dealership for years and would not be a significant change from existing conditions. Member Clemente concurred, stating that it was significant that this is a renovation project as opposed to a new project. Member Shover then made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Sclafani. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board members then proceeded to deliberate on the sign variance request. The Zoning Board members concurred that this variance for total number of signs would not result in any change in the character of the area or create detriment to nearby properties, as the area is already commercial in nature, that the neighboring properties to this facility include McDonalds and Walmart, that the depth of the building location from the front lot line is relevant in connection with the requested number of signs; that while an alternative could be permitting less total number of signs at this facility, in this case it is not feasible as the Honda logo and Rensselaer Honda dealership names should be on the building, that a sign indicating the service area should be included, and that directional signage is actually beneficial to customers using this facility, with Member Shover noting that this would be consistent with the signage approved for the nearby Carbone Subaru dealership facility; that while the variance could be deemed substantial, it is significant that the total square footage of the signs at this facility are in compliance with Town Code, with Member Clemente stating that while the total number of signs may

be viewed as substantial, the placement of the signs are both appropriate and functional for customer convenience; that there will be no adverse physical or environmental impact from the variance, with Member Clemente noting that the applicant has agreed to a condition that the directional signs would be extinguished during off-business hours; and that while the need for the variance can be determined to be self-created, the directional signs add to the safety of customers in the service center area, and that this factor should not be determinative of the application. Member Schmidt noted that he felt this was an appropriate balance between allowing the variance for customer safety with the agreement by the owner to keep the directional signs extinguished during off-business hours. Based on these findings and deliberations, Member Clemente made a motion to approve the sign variance application subject to the condition that the directional signs be extinguished during off-business hours. Member Shover seconded the motion subject to the stated condition. The motion was unanimously approved, and the sign variance application approved subject to the stated condition. The Zoning Board directed Ms. Manley to coordinate with the Town Building Department on permitting requirements for the requested signs.

The next item of business on the agenda was the area variance application submitted by Michael Vickers for property located off Krieger Lane. This application pertains to the requirement under the New York Town Law that a building lot have a minimum of 15 feet of frontage on a public highway, and the Vickers lot located off Krieger Lane does not have such road frontage. If a building lot does not have the required road frontage, the New York Town Law allows for an application for an area variance to provide access to the building lot by private easement or right-of-way. Mr. Vickers has submitted his deed for the building lot, which does include a 40-foot wide common easement off of Krieger Lane to access his building lot. The Zoning Board had previously opened a public hearing on this application, which public hearing is continued at this meeting. Member Sclafani noted that a

letter had been received from the Center Brunswick Fire Company which includes comments on emergency vehicle access requirements for this building lot. Member Sclafani read the letter from the Center Brunswick Fire Company into the record. The Center Brunswick Fire Company does comment that the road leading to the Vickers building lot should be at least 26 feet wide and paved for fire apparatus, and have no more than a 6% grade. In addition, the Center Brunswick Fire Company recommends that any driveway over 150 feet require a turnaround large enough for fire apparatus. The Center Brunswick Fire Company also recommends that each building lot off of the common driveway have its own separate driveway off of the common roadway leading to the residence. The Fire Department also questioned whether a walk-through of any residence to be constructed will be offered after completion, and whether the homes would have integrated fire alarms. Michael Vickers was present at the meeting, and acknowledged the comments of the Center Brunswick Fire Company, and stated on the record that he would comply with the recommendations of the Center Brunswick Fire Company in its comment letter concerning road construction. Member Shover had questions regarding the Vickers lot layout, which was reviewed with Mr. Vickers on a map. Mr. Vickers also stated that while he had submitted an application to the Brunswick Planning Board to subdivide his building lot into two lots, he did not have any present plan to subdivide the property at this time, and only wants to build one house currently on his building lot. Member Schmidt raised a question regarding the Fire Department's comment concerning a separate driveway for each residence. It was discussed that each building lot would have its own driveway off of the common road to be constructed, which would comply with the Fire Department's comment. The Zoning Board also stated that a written private roadway maintenance agreement between the Vickers lot and the other lots that have access from the 40-foot wide common easement must be prepared and reviewed by the Town, and the executed agreement filed with the Town Building Department.

Member Clemente then opened the floor for receipt of any additional public comment on this application. Hearing none, Member Sclafani made a motion to close the public hearing on the Vickers area variance application, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing closed. Member Clemente stated that the Zoning Board was prepared to proceed to deliberate on the area variance application. Attorney Gilchrist noted that while the application seeks an area variance for a residential use, which would constitute a Type 2 action under SEQRA, this particular area variance is distinct in that it is authorized under the Town Law to provide access for a building lot by private right-of-way or easement rather than public road, and counseled the Zoning Board that it should make a determination of environmental significance under SEQRA. Member Schmidt stated that he did not feel the area variance allowing access to a building lot via a private right-of-way would result in any significant adverse environmental impact. Member Clemente concurred, stating that the road will need to be constructed properly, including appropriate drainage and paving materials under the review of the Town, and would not result in any significant adverse environmental impact. Member Clemente then made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Sclafani. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board of Appeals then proceeded to deliberate on the elements for the area variance. The Zoning Board members concurred that allowing access to this building lot via private right-of-way or easement would not result in any adverse change in the character of the area or create a detriment to nearby properties, as the general area includes a number of residential homes as well as large open fields, and adding one residential home with a private road over a private easement would not result in any change in the character of the area, also noting that there was no opposition submitted by any neighbor in the general area; that in this case, a feasible alternative did not exist, with the Zoning

Board noting that the Brunswick Planning Board had previously approved a subdivision creating this building lot owned by Vickers with access via private easement, and that Vickers would simply be employing the use of the deeded private right-of-way consistent with the Planning Board approval of the subdivision; that whether the variance was deemed substantial is not relevant in this case as there is no applicable standard by which to make such determination; that there would be no adverse physical or environmental impact from accessing the Vickers building lot via private right-of-way; and that the need for the variance was not self-created as the building lot had previously been approved by the Brunswick Planning Board with access served by private right-of-way. The Zoning Board discussed the conditions in the comment letter submitted by the Center Brunswick Fire Company, noting that the roadway providing access to the Vickers lot should be required to be 26 feet wide of pavement, with appropriate drainage, with a turnaround constructed at the terminus of the roadway, and at no more than a 6% grade, with Member Shover stating that a plan identifying these road specifications should be submitted and approved by the Building Department prior to any work being completed. The Zoning Board also determined that the Fire Department's questions regarding a walk-through of the completed residence as well as integrated fire alarms in the residence were not typical requirements for residential construction, but did appreciate the comments being submitted by the Fire Department. The Zoning Board members also concurred that a written private roadway maintenance agreement should be prepared and reviewed by the Town, and then executed and filed with the Building Department. Based on these findings and deliberations, Member Sclafani made a motion to approve the area variance which will allow access via private right-of-way to the Vickers building lot subject to the following conditions:

1. The private road to be constructed within the 40-foot private right-of-way must be 26 feet wide, paved, with proper drainage, and a turnaround constructed at the terminus, at no more than a 6% grade;
2. A plan for the road specifications and construction must be prepared and approved by the Town Building Department prior to road construction;
3. A written private roadway maintenance agreement must be prepared and reviewed by the Town; and
4. The written private roadway maintenance agreement must be executed and filed with the Building Department prior to road construction.

Member Schmidt seconded the motion subject to the stated conditions. The motion was unanimously approved, and the area variance granted subject to the stated conditions, allowing access to the Vickers building lot via private right-of-way.

The next item of business on the agenda was the referral from the Brunswick Town Board on the application submitted by Bank of America to amend the Brunswick Square Plaza Planned Development District to allow the installation of a stand-alone kiosk in the parking lot at the Brunswick Square Plaza. Paul Mutch, of Stonefield Engineering was present for the applicant. Mr. Mutch presented an overview of the proposal. Member Sclafani stated she had a few concerns regarding the proposed project, including its proximity to the CDTA bus stop, that it is proposed to be located 12 feet from the front lot line adjacent to Hoosick Road, and that the ATM kiosk should be considered in another location in the plaza so that it was not in proximity to the CDTA bus stop and would not create any potential pedestrian safety issue. Member Clemente concurred, stating that the proposed location of the kiosk does raise a concern regarding safety of pedestrians; that CDTA busses enter the plaza parking lot in an easterly direction on Hoosick Road in an area where there is

no signage and the busses may come in at an increased speed to get up the incline that exists in that entrance driveway; and she also has a safety concern regarding the potential of cars lining up in the area of the ATM kiosk; and that a pedestrian safety study should be performed. Member Clemente did state she is not concerned regarding the kiosk affecting the character of the area, since the area is generally commercial in nature already, but did have a concern regarding pedestrian safety. Member Shover also had a concern regarding the location of the kiosk 12 feet from the front lot line, and reviewed the plan sheet with Mr. Mutch regarding the location of the kiosk on the site. Member Clemente had a concern regarding snow storage and removal in the area of the CDTA bus shelter. Member Shover also stated he had a concern regarding the lighting for the ATM kiosk and any impact on Hoosick Road. The Zoning Board members concurred that they would like to receive the written recommendation of the Planning Board to consider the Planning Board recommendation in making their final recommendation, and placed this matter on the November 21 agenda for further discussion.

The next item of business on the agenda was the special use permit and use variance application submitted by Cellco Partnership d/b/a Verizon Wireless. The applicant seeks a special use permit and use variance in connection with installation of a proposed major telecommunications tower on property located on Creek Road and Menemsha Lane. Member Clemente noted that the Zoning Board had retained a consulting review engineer on this application, and that Ronald Laberge, P.E. of Laberge Group was present at the meeting. Member Clemente requested that Mr. Laberge review his October 14, 2016 letter to the Zoning Board of Appeals concerning his review of the application materials. Mr. Laberge reviewed his letter dated October 14, 2016, which he stated was in the nature of a completeness review of the application materials pursuant to the Town's telecommunication law. Mr. Laberge did note that the site plan submittal was incomplete, and that additional information regarding grading, drainage, and landscaping must be provided; that the visual

assessment performed is not complete; that a structural evaluation of the proposed tower should be submitted; and that the visual assessment within the SEQRA environmental assessment form is incomplete. Mr. Laberge did say that the RF Engineering report submitted with the application is acceptable. Mr. Laberge did report that information concerning substantiation of need for the cell tower in relation to the Verizon service area was submitted, and that Verizon did look at the possibility of co-location on an existing high-tension power line but that the option was not feasible due to height and safety concerns. Mr. Laberge did note the application materials discussed three potential sites on the parcel, with one location being identified as the preferred location. Mr. Laberge concluded that more detail is required on the site plan, more detail is required on tower design, and additional visual simulations must be submitted for review. Member Clemente had a question concerning the substantiation of need. Mr. Laberge did state that the location of a cell tower in this general area is reasonable, and that the tower need for that service area has been shown. David Brennan, Esq., of the law firm Young Sommer, was present, representing Verizon on the application. Mr. Brennan stated that he was in receipt of the Laberge Group letter dated October 14, and that responses to these comments would be prepared by Verizon. Mr. Brennan did present an overview of the application for members of the public in attendance, including description of the proposed monopole tower, the parcel on which the tower is proposed, a description of the service gap in the NYS Route 2/Eagle Mills/Pinewoods/Menemsha Lane area, and the three options to locate the monopole tower on the parcel. Mr. Brennan did indicate that the site plan will be advanced, and that the request for additional structural design detail and vegetation will be reviewed. Mr. Brennan stated that the SEQRA environmental assessment form will be updated and additional photo simulations will be advanced. Mr. Brennan did state that it was the applicant's request that the full stormwater pollution prevention plan be prepared at the time a final location is identified for the monopole tower, as a change in

location will affect the preparation of the full stormwater pollution prevention plan. Mr. Brennan requested that the matter be placed on the November Zoning Board of Appeals agenda, but that it may be necessary to advance any substantive discussion on the application until the December meeting if the applicant is not able to address Mr. Laberge's comments in advance of the November meeting date. The Zoning Board tentatively placed this application on the November 21 agenda. The Zoning Board members entertained additional questions regarding procedure from members of the public.

Two items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Helen Rezey for property located at 6 Greene Street. The applicant is proposing to install a 10-foot by 16-foot shed, and the proposed location requires three variances, including a rear yard setback, side yard setback, and percentage of lot coverage. Christopher Dobert was present on behalf of Ms. Rezey, and handed up a letter from Ms. Rezey authorizing Mr. Dobert to appear on her behalf at this meeting. The Zoning Board members reviewed the application documents. Mr. Dobert stated that the proposed use of the new shed was to store a motorcycle and 3-wheeler inside the shed and not outside exposed to the elements. Member Clemente had a question on the schematic submitted with the application which shows a "tin shed" on the property, and asked if that was intended to remain after the new shed is installed. Mr. Dobert stated that the old tin shed would be removed after the new shed is installed. The Zoning Board members determined the application materials to be complete, and scheduled a public hearing on this application for the November 21 meeting to commence at 6:00pm. Mr. Dobert did consent to Zoning Board member access to the property to review the site.

The second item of new business discussed was a special use permit application submitted by Cumberland Farms, for a proposed Cumberland Farms store to be located at the corner of Hoosick

Road and Hillcrest Avenue. Stefanie Bitter, Esq. was present representing the applicant, together with Jim Gillespie of Bohler Engineering. Ms. Bitter stated that the site is located at 630 Hoosick Road, and that a site plan application is currently pending before the Brunswick Planning Board. The special use permit application is required in connection with the proposed gas pumps/canopy/filling station. Ms. Bitter stated that Cumberland Farms is proposing to construct a 4,786 square foot store with a 6-pump gasoline filling area on a 1.3-acre parcel located at the intersection of Hoosick Road and Hillcrest Avenue. There is an existing home and accessory buildings on the parcel which will be removed. Cumberland Farms will be leasing the property from Arax Properties. Cumberland Farms is proposing to use the existing access off Hoosick Road to the Arax Properties commercial site, and a new proposed access off of Hillcrest Avenue. Ms. Bitter stated that Creighton Manning has been retained to perform a traffic assessment. The property is located in a B-15 Zoning District with the rear portion of the property located in the R-9 Zoning District, but Ms. Bitter stated that no commercial activity is being proposed within the R-9 area. Ms. Bitter reviewed photographs showing similar Cumberland Farms stores located in Cohoes, Latham, and Colonie. Ms. Bitter stated that the underground storage tanks for fuel storage being proposed are state of the art. Ms. Bitter stated Cumberland Farms would work with the Brunswick No. 1 Fire Department on any issues concerning emergency access. The site is served by public water and public sewer. A total of 34 parking spaces are proposed, including 22 separate parking spaces and 12 spaces within the fuel filling area. The Cumberland Farms store is proposed to operate on a 24/7 basis. Ms. Bitter stated that no variances are required for the construction of the buildings or fuel pumps, but if the site plan is approved, variances for signage would likely be filed. Mr. Gillespie presented photo simulations of the existing site with the proposed Cumberland Farms store superimposed. Member Shover asked whether a traffic signal was proposed at Hillcrest Avenue. Mr. Gillespie stated that there was no traffic signal

proposed for Hillcrest Avenue, and it was his understanding that NYSDOT is currently reviewing a proposal to install a traffic light at the Lord Avenue/Planet Fitness location. This matter is tentatively placed on the November 21 meeting agenda, pending coordination with the Brunswick Planning Board on the site plan application and recommendation on the special use permit application.

One additional item of new business was also discussed. Nigro Companies and Golub Corporation had presented an application to amend the Brunswick Plaza Planned Development District (Price Chopper Plaza) to the Brunswick Town Board at its meeting held October 13, at which meeting the Town Board referred the application to both the Brunswick Planning Board and the Brunswick Zoning Board of Appeals for review and recommendation. The Zoning Board members received the application materials at the October 17 meeting. Ronald Laberge, P.E. of Laberge Group was present, representing Golub Corporation in connection with the PDD amendment application. The Zoning Board entertained a presentation by Mr. Laberge concerning the proposed amendment. Mr. Laberge reviewed the plan to construct a drive-thru pharmacy at the existing Price Chopper store, which will be located on the east side of the current building. Mr. Laberge stated there would be no change to greenspace as the area proposed for the drive-thru pharmacy is currently paved, but that the site would lose 13 parking spaces for the construction of the drive-thru pharmacy. Mr. Laberge stated that Golub Corporation had reviewed the proposal with CDTA regarding the bus shelter located in proximity to the proposed drive-thru pharmacy, and that CDTA has reviewed and approved the plan and that it will not result in any change in circulation for the CDTA bus route. Mr. Laberge identified an area of a sidewalk bump-out in the area of the drive lane for pedestrian safety. Member Shover had a question regarding access to the drive-thru pharmacy. Mr. Laberge reviewed the proposed traffic plan, and stated that signage could be installed to make clear to customers the traffic pattern for the pharmacy drive-thru. Member Shover had some questions regarding back-up area for

remaining parking spaces in relation to the drive-thru pharmacy driving lane. There was discussion concerning the distance between the remaining parking spaces and the drive-thru lane. Elevations of the proposed drive-thru pharmacy were also presented and reviewed by the Zoning Board. This matter is placed on the November 21 agenda for further discussion.

The index for the October 17, 2016 meeting is as follows:

1. Sign Studio, Inc./Rensselaer Honda - Sign variance - Granted with condition;
2. Vickers - Area variance - Granted with conditions;
3. Bank of America - Brunswick Square Planned Development District Amendment Recommendation - 11/21/2016;
4. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance application - 11/21/2016;
5. Rezey - Area variance - 11/21/2016 (public hearing to commence at 6:00pm);
6. Cumberland Farms - Special use permit - 11/21/2016; and
7. Brunswick Plaza Planned Development District Amendment - Referral from Brunswick Town Board for Recommendation - 11/21/2016.

The proposed agenda for the November 21, 2016 meeting currently is as follows:

1. Rezey - Area variance (public hearing to commence at 6:00pm);
2. Bank of America - Brunswick Square Planned Development District Amendment Recommendation;
3. Nigro Companies/Golub Corporation - Brunswick Plaza Planned Development District Amendment Recommendation;
4. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance; and
5. Cumberland Farms - Special use permit.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD NOVEMBER 21, 2016

PRESENT were MARTIN STEINBACH, CHAIRMAN, E. JOHN SCHMIDT, ANN CLEMENTE, WILLIAM SHOVER and CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the October 17, 2016 meeting. Upon motion of Member Clemente, seconded by Member Sclafani, the draft minutes of the October 17, 2016 meeting were unanimously approved without amendment.

Chairman Steinbach noted that the special use permit application and use variance application submitted by Cellco Partnership d/b/a Verizon Wireless is adjourned to the December 19 meeting. The applicant did submit additional technical information, but the Zoning Board's consulting engineer and the Zoning Board members had not had adequate time to review that material, and the matter is placed on the December 19 agenda for further discussion.

The first item of business on the agenda was the area variance application submitted by Helen Rezey for property located at 6 Greene Street. Helen Rezey, the property owner, and Christopher Dohert were present for applicant. Chairman Steinbach inquired whether there were any changes to the application. Mr. Dohert stated there was one change to the proposal, which was to maintain the shed in its current general location on the lot, but to turn the shed 90 degrees in order to allow better access, and also to slightly relocate the shed so that it is three feet from the fence line along the neighboring property and three feet from the fence line toward the public road. Chairman Steinbach

asked whether this affected the extent of the requested variances. Ms. Guastella stated that this did reduce the extent of the requested variances, both as to the rear yard setback and side yard setback. Regarding the rear yard setback, Ms. Guastella stated that a 20-foot setback is required, and the applicant was initially proposing to have the shed directly on the property line, but now the shed will be three feet from the line, and the request is for a 17-foot variance. Ms. Guastella stated that a 10-yard setback is required for the side yard and the shed was initially to be placed on the property line, but by repositioning the shed three feet from the lot line, a 7-foot variance is requested regarding the side yard setback. Ms. Guastella confirmed that the percentage of lot coverage variance is unaffected by the change in location of the shed. Member Clemente asked whether the old tin shed, which is on the property currently and which is shown on the concept plan, is to remain or to be removed. The applicants stated that the tin shed is still used to store yard equipment, while the new proposed shed is to be used for a motorcycle and recreational vehicle, and the applicant's intent is to keep the tin shed in its current location. The Zoning Board then opened the public hearing on the variance applications. The notice of public hearing was read into the record, noting that the public hearing notice had been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. Linda Motzer, 12 Greene Street, stated that she owns the property that abuts the Rezey backyard, and that she had no objection to any of the requested variances as long as the shed remains three feet from the side yard and rear yard property lines. There were no further public comments. Member Clemente made a motion to close the public hearing, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing on the Rezey area variance applications was closed. The Zoning Board members determined that they were prepared to proceed with deliberation and action on the variance applications. Attorney Gilchrist

stated that while the variances from side yard and rear yard setback requirements for this residential lot is a Type 2 action under SEQRA, the requested variance for percentage of lot coverage is subject to SEQRA review, and that the Zoning Board did need to make a SEQRA determination concerning that variance application. Chairman Steinbach inquired whether the shed would be placed on a concrete slab. Mr. Dobert stated that there will be no foundation or concrete slab, rather the pre-fabricated shed will be delivered to the site and placed on blocks. Member Schmidt stated that he did not see any environmental impact concern regarding the installation of the shed. Member Sclafani stated that she concurred, particularly since there was no foundation or permanent concrete slab being installed with the shed. Member Clemente also concurred, stating that she did not see any significant stormwater runoff or erosion concern. Based on this deliberation, Chairman Steinbach made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Schmidt. The motion was unanimously approved, and a SEQRA negative declaration adopted with respect to the application for variance from percentage of lot coverage. The Zoning Board then determined to address all three variance requests simultaneously in terms of considering elements for the requested area variances. During deliberation, the Zoning Board members determined and found that the requested variances will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties, finding that there are a number of sheds located in yards in the immediate neighborhood, that the shed will have a “cottage” style and will fit in with the character of the neighborhood, and that the adjoining neighbor raised no objection regarding the installation of the shed at the proposed location; that there was not a feasible alternative available in this case, as the lot is very small and installation of the shed in an alternate location was not feasible, and that while a smaller shed could be used, a shed with smaller dimensions will not meet the goal of the applicant to store a motorcycle and recreational vehicle, and that the applicants did take into account the concerns

of the adjoining neighbor in slightly relocating the shed three feet away from the side and rear lot lines; that the requested variances were substantial based on the numbers, but that the small size of the lot was a relevant consideration on this element; that the variances would not result in an adverse environmental or physical effect, noting that a SEQRA negative declaration had been adopted on the action; and that the need for the variances could be considered not to be self-created, given the small size of the lot under consideration. Given this deliberation and findings, the Zoning Board moved forward to act upon the variance requests. Member Shover made a motion to approve the rear yard setback variance, side yard setback variance, and variance for percentage of lot coverage as requested, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the variance requests were granted on the Rezey application. Chairman Steinbach directed the applicants to coordinate with the Building Department on all required building permits and inspections.

The next item of business on the agenda was the referral of the Bank of America application for amendment to the Brunswick Square Planned Development District. The Town Board is seeking a recommendation from the Zoning Board of Appeals on this application. The applicant seeks the PDD amendment to allow the installation of a stand-alone ATM kiosk within the parking lot of the Brunswick Square shopping center. Attorney Gilchrist noted that Paul Mutch, P.E., engineer for the applicant, had contacted him and inquired whether an appearance was necessary before the Zoning Board, or whether the Zoning Board would merely be deliberating on the recommendation similar in the process before the Planning Board. Attorney Gilchrist advised the Zoning Board members that he told Mr. Mutch the Zoning Board would likely be reviewing the Planning Board recommendation and finalizing its own recommendation, and that an appearance was not required. The Zoning Board members concurred. The Zoning Board members then reviewed the Planning Board recommendation through resolution dated October 20. The Zoning Board members found that the Planning Board

resolution addressed the same concerns raised by the Zoning Board in prior meetings, and generally agreed with the negative recommendation advanced by the Planning Board. Member Sclafani stated that she would like the Zoning Board recommendation to emphasize the concern regarding the proximity of the proposed ATM kiosk to the existing CDTA bus stop, particularly regarding pedestrian safety. Member Clemente concurred, stating that the Zoning Board had raised this issue previously, and that no additional information had been submitted to address this safety concern. The Zoning Board members then unanimously concurred that a letter should be sent to the Town Board stating that the Zoning Board supported and concurred in the Planning Board resolution, but further to emphasize and reaffirm the Zoning Board's concern regarding pedestrian safety as it pertains to proximity of the proposed ATM kiosk to the existing CDTA bus stop location. The Zoning Board directed attorney Gilchrist to prepare a letter confirming its findings and recommendation, and forward that letter to the Town Board for consideration.

The next item of business on the agenda was the application submitted by Nigro Companies/Golub Corporation, seeking an amendment to the Brunswick Plaza Planned Development District to allow the construction of a drive-thru pharmacy on the east side of the existing Price Chopper/Market 32 building located in the Brunswick Plaza. Attorney Gilchrist noted that the Brunswick Town Board had retained the engineering firm of Kestner Engineers, Mark Kestner, P.E., as review engineer on the application, and that Mark Kestner was present at the meeting. Ronald Laberge, P.E. was present for the applicant, together with representatives of Golub Corporation. Chairman Steinbach requested Mr. Laberge to present a brief summary of the proposal, and whether there were any changes since the last time the Zoning Board considered the matter. Mr. Laberge presented a review of the proposal, reviewing the concept plan, and stating that there had been no changes since the prior presentation. Chairman Steinbach asked whether the proposal would

negatively impact overall parking in the Brunswick Plaza. Mr. Kestner stated that the Planning Board had considered the parking issue as well, and that the Brunswick Plaza currently has 590 parking spaces, four of which are used for a cart corral, resulting in 586 usable parking spaces. Mr. Kestner stated that the current proposal would eliminate 15 parking spaces on the east side of the Price Chopper building. A representative of Golub Corporation stated there were 71 parking spaces on the east side of the Price Chopper building used primarily for employee parking, and that the drive-thru pharmacy would eliminate 15 spaces, resulting in 56 spaces to the east side of the building. The Golub Corporation representative stated that the store had a maximum of 60 employees during any particular shift, but that it is more typical to have approximately 30 employee cars parked on the east side of the building during any shift, and that this proposal will not create any parking issues for employees or customers on the east side of the building. Member Clemente requested Mr. Laberge to review the traffic flow resulting from the drive-thru pharmacy proposal. Mr. Laberge reviewed the proposal to have a drive-thru lane associated with the pharmacy, maintain the two-way parking lane immediately to the east, and did review the current route for CDTA busses when picking up patrons at the current bus stop location. Member Shover inquired whether the proposal is to continue two-way traffic immediately east of the proposed drive-thru lane. The applicant is seeking to continue the two-way travel lane, and the matter was then discussed by the Zoning Board members. Mr. Kestner stated that the Planning Board was concerned regarding the two-way traffic immediately adjacent to the drive-thru lane, particularly since the CDTA bus stop is located adjacent to the two-way travel lane. Mr. Kestner stated that the Planning Board felt this traffic circulation issue was not fatal to the PDD amendment on a concept basis, but did seek to have the right to review the travel circulation issue and pedestrian safety in connection with its site plan review jurisdiction in the event that the Town Board approved the PDD amendment. Member Clemente asked the applicant whether CDTA

would agree to modify the bus circulation route at this location. The applicant stated that it had not yet approached CDTA on that issue. Mr. Kestner also noted the Planning Board had questions regarding the initial installation of the bus stop location, since there was no record of that having been reviewed by the Town. Member Schmidt asked whether the Planning Board would retain jurisdiction regarding the traffic circulation issue with the CDTA busses. Attorney Gilchrist stated that the Planning Board had provided in its recommendation to the Town Board that the Planning Board sought to retain jurisdiction to address traffic circulation and require modifications, if necessary, and that the Town Board would need to address that issue in its resolution acting upon the PDD amendment application. The Zoning Board members then generally reviewed the Planning Board recommendation, and determined that it adequately addressed the Zoning Board's comments and concerns, and unanimously determined to support and concur in the Planning Board recommendation to the Town Board. The Zoning Board directed attorney Gilchrist to prepare a letter confirming its concurrence in the Planning Board recommendation, and forward that letter to the Town Board for consideration.

Chairman Steinbach again confirmed that discussion on the special use permit and variance applications submitted by Cellco Partnership d/b/a Verizon Wireless is adjourned to the December 19 meeting.

The next item of business on the agenda was the special use permit application submitted by Cumberland Farms. Cumberland Farms has submitted a special use permit application and site plan application to the Town for a proposed Cumberland Farms store to be located at the corner of Hoosick Road and Hillcrest Avenue. The special use permit is required in connection with the filling station, as Cumberland Farms is proposing to include a 6-pump fuel island in connection with the proposed Cumberland Farms store. Stefanie Bitter, Esq., applicant attorney, was present, together with Scott

Shearing of Bohler Engineering and Wendy Holsberger of Creighton Manning. Attorney Bitter reviewed the proposal, by which Cumberland Farms seeks to construct a 4,786 square foot convenience store with a 6-pump fuel island at 630 Hoosick Road, on a 1.3-acre site that has frontage on Hoosick Road and Hillcrest Avenue; that the current use of the site includes a residence with associated outbuildings, which would be demolished in the event the Cumberland Farms store is constructed; that access from Hoosick Road is proposed through the existing entrance-way for the Advanced Auto Parts store, which was identified as phase 1 of the overall site development, with the Cumberland Farms being phase 2; that a separate access point is proposed on Hillcrest Avenue; that Creighton Manning had prepared a full traffic impact assessment report for consideration by the Town; that the site is located in the B-15 and R-9 Zoning Districts, but that no commercial use is being proposed within the R-9 District, and limited solely to the B-15 Zoning District; that the special use permit application is required in connection with the installation of the 6-pump fuel island, for which the Planning Board had completed its recommendation; that the Planning Board had thoroughly reviewed and considered the traffic impact assessment report prepared by Creighton Manning when deliberating on its recommendation; that Cumberland Farms will coordinate with the Brunswick No. 1 Fire Department on any comments regarding fire code compliance; that the site is served by public water and public sewer; that adequate parking is proposed; that the use is complimentary to the surrounding mixed commercial area; that an adequate vegetation buffer is being proposed to the rear of the site and an overall landscaping and vegetation plan is proposed; the use is pedestrian-friendly, including outdoor seating areas as well as bicycle access; that the proposal will not create a traffic hazard, as the traffic impact assessment report concludes that the majority of the customers will consist of existing pass-by traffic; that there will be only a 5% increase in traffic as a result of the action, which computes to approximately one car per minute during the AM peak and

PM peak hours, which is not significant in relation to current conditions. Attorney Bitter then generally reviewed the Planning Board recommendation. Member Clemente asked whether there was a sidewalk proposed in the front of the store. Mr. Shearing showed the sidewalk location on the site plan. Member Shover wanted to hear additional information regarding the traffic impact assessment report. Wendy Holsberger, P.E. of Creighton Manning, generally reviewed the traffic impact assessment report dated October 31, 2016, including pass-by traffic percentages; new trips generated by the project during the AM peak hour and PM peak hour; “no build” and “build” conditions for 2017; that there will not be a significant delay added to either Hillcrest Avenue or the existing commercial entrance on Hoosick Road; and there would not be significant impact to levels of service at nearby intersections. Member Shover asked whether a traffic signal was being proposed at Hillcrest Avenue. Ms. Holsberger stated that the projected volume from this action did not warrant a light installation at Hillcrest Avenue. Member Schmidt asked whether the traffic impact assessment report studied the amount of time it took to exit from Hillcrest Avenue onto Hoosick Road. Ms. Holsberger stated that the traffic impact assessment report did analyze this issue in terms of level of service analysis, and reviewed the peak hour current conditions, 2017 “no build” conditions, and 2017 “build” conditions when taking a left turn out of Hillcrest Avenue. Member Clemente inquired about the option of creating an internal access road for the commercial uses along Hoosick Road, thereby eliminating the number of curb cuts. Ms. Holsberger stated that she understood the concept, but that this project did not generate traffic to warrant this mitigation, but that it might remain a long-term concept plan for the Hoosick Road corridor. The Zoning Board members then generally discussed the completeness of the application, including the recommendation of the Planning Board, and determined that the special use permit application is complete for scheduling and holding the public

hearing. The Zoning Board members set the public hearing on the special use permit application for its December 19 meeting to commence at 6:00pm.

There were no new items of business discussed.

The index for the November 21, 2016 meeting is as follows:

1. Rezey - Area variances - Granted
2. Bank of America - Brunswick Square Planned Development District Amendment Recommendation - Completed
3. Nigro Companies/Golub Corporation - Brunswick Plaza Planned Development District Amendment Recommendation - Completed
4. Cellco Partnership d/b/a Verizon Wireless - Special use permit and variance applications - 12/19/2016
5. Cumberland Farms - Special use permit - 12/19/2016 (public hearing to commence at 6:00pm)

The proposed agenda for the December 19, 2016 meeting currently is as follows:

1. Cumberland Farms - Special use permit (public hearing to commence at 6:00pm)
2. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD DECEMBER 19, 2016

PRESENT were MARTIN STEINBACH, CHAIRMAN, E. JOHN SCHMIDT, ANN CLEMENTE, and WILLIAM SHOVER.

ABSENT was CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the November 21, 2016 meeting. Upon motion of Member Clemente, seconded by Chairman Steinbach, the minutes of the November 21, 2016 meeting were unanimously approved without amendment.

The first item of business on the agenda was the special use permit submitted by Cumberland Farms regarding property located at 630 Hoosick Road, at the intersection of Hoosick Road and Hillcrest Avenue. The applicant seeks to construct a Cumberland Farms convenience store, and requires a special use permit in connection with the proposed six-pump, self-serve gasoline island. Stefanie Bitter, Esq., project attorney, together with Jim Gillespie, P.E. of Bohler Engineering and Wendy Holsberger, P.E. of Creighton Manning, were present for the applicant. Attorney Bitter reviewed the proposed project, by which Cumberland Farms seeks to construct a 4,786 square foot convenience store with a six-pump fuel island at 630 Hoosick Road, on a 1.3 acre site that has frontage on Hoosick Road and Hillcrest Avenue; that the current use of the site includes a residence and associated outbuildings, which would be demolished in the event the Cumberland Farms store is constructed; that access from Hoosick Road is proposed through the existing entrance way for the

Advance Auto Parts store, which was identified as phase 1 of the overall site development, with the Cumberland Farms being proposed for phase 2; that a separate access point is proposed on Hillcrest Avenue; that the site is located in the B-15 and R-9 Zoning Districts, but that no commercial use is being proposed within the R-9 District, and limited solely to the B-15 Zoning District; that the special use permit application is required in connection with the installation of the six-pump fuel island; that Cumberland Farms will meet the requirements of the Brunswick No. 1 Fire Department concerning their comments for the proposal; that the site is served by public water and public sewer; that adequate parking is proposed; that the use is complimentary to the surrounding mixed commercial area; that the use is pedestrian friendly, including outdoor seating areas as well as bicycle access; and that the proposal will not create a traffic hazard. Attorney Bitter then reviewed the special use criteria, including the specific special use criteria for a filling station found in Brunswick Zoning Ordinance Section 7(D), stating that the project meets all specific special use criteria; and also the general special use criteria found at Brunswick Zoning Ordinance Section 7(C), and stating that the project meets all of the general criteria, including the fact that the project will not create a traffic hazard. Attorney Bitter generally stated that the majority of the customers will be existing pass-by traffic, and that the site is located on the south side of Hoosick Road and will generally be traveling with the westbound traffic during the AM peak, and the eastbound traffic during the PM peak. Attorney Bitter stated that there will only be a 5% increase in total traffic, but that the traffic issues will be discussed by Ms. Holsberger. Mr. Gillespie reviewed the site specific project, providing pictures of the current Cumberland Farms store in Latham as well as a rendering of the Brunswick project site with the proposed new store superimposed. Mr. Gillespie also reviewed the proposed architecture for the Brunswick store, which will be colonial in nature, including a gable roof, shingles, dormers, columns, and cultured stone both on the building and the gas canopy. Mr. Gillespie stated that this type of store

has been well-received where constructed in other communities. Ms. Holsberger reviewed the traffic assessment report prepared for the project, stating that the report was prepared in compliance with NYSDOT and ITE standards. Ms. Holsberger stated that site specific traffic data was collected, both at the intersection of Hillcrest Avenue and Route 7 and also the site access driveway located opposite Leonard Avenue. Ms. Holsberger stated that projections of future traffic increases were considered, both under a “no-build” and under a “build” scenario. Regarding the “build” scenario, Ms. Holsberger stated that trip generation figures for convenience-type stores were used to determine projected additional traffic associated with the proposed Cumberland Farms. Ms. Holsberger reviewed projected data for both the AM peak and PM peak periods under the “build” condition, and reviewed the projected delays from entering Hoosick Road from Leonard Avenue and Hillcrest Avenue, stating that there would be an additional seven-second delay from Leonard Avenue during the AM peak and a nine-second delay from Leonard Avenue during the PM peak; and no additional delay from Hillcrest Avenue during the AM peak, but an additional eight-second delay from Hillcrest Avenue during the PM peak. Ms. Holsberger stated that with these figures, traffic mitigation is not required under NYSDOT standards. Ms. Holsberger did state that the traffic report presented a conservative analysis regarding traffic impacts. The Zoning Board then opened a public hearing on the special use permit application. The notice of public hearing was read into the record, noting that the public hearing notice was published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. Pam Harbour, 14 Leonard Avenue, stated that Leonard Avenue was a dead-end street with only one way out being the entrance onto Hoosick Road, and that Leonard Avenue was located opposite the existing Advance Auto Parts access driveway. Ms. Harbour stated that a traffic signal is required at this intersection, because even the Advance Auto Parts entrance has significantly

impacted the ability to get in and out of Leonard Avenue. Ms. Harbour stated that she has no problems with a Cumberland Farms store, but that the entrance way does need a traffic signal. Ms. Harbour stated that she feels the Town of Brunswick is disregarding the residents on Leonard Avenue, many of which have been residents on Leonard Avenue for more than 20 years. Ms. Harbour stated that there have already been three accidents directly across from Leonard Avenue at the location of the Advance Auto Parts driveway, including one accident which involved her son. Ms. Harbour noted that the Town of Brunswick is proposing to rezone area around Leonard Avenue to commercial, but that the Commercial Zoning District line would not extend to the last two houses at the end of Leonard Avenue, which Ms. Harbour feels is inappropriate. Ms. Harbour stated that the Cumberland Farms will significantly add to traffic issues on Hoosick Road, and acknowledges that Hoosick Road will continue to have a lot of traffic, but the access in and out of Leonard Avenue has become impossible. Ms. Harbour stated that a traffic light is not required at Hillcrest Avenue, since the Cumberland Farms will be using Hillcrest only as a means for secondary access, with the main access to both Advance Auto Parts and Cumberland Farms being directly opposite Leonard Avenue. Ms. Harbour stated that she felt the projected nine-second delay from exiting Leonard Avenue is ridiculous. Ms. Harbour stated that she felt the traffic on Hoosick Road has affected the Leonard Avenue properties, homes, and created a significant safety risk, that the residents' investments in their properties are at risk, that property values have been reduced, and that these commercial projects have affected the quality of life for residents on Leonard Avenue. Ms. Harbour also stated that the Cumberland Farms at other locations plays music at the gas pumps, and that this music will probably affect residents behind the Cumberland Farms store. Pat Germain, 18 Coolidge Avenue, stated she has lived at her residence for 38 years, and is located only one block away from the proposed Cumberland Farms. Ms. Germain stated she acknowledges the Hoosick Road corridor is zoned commercial, but questions the need for

another gas station within a few blocks of three existing gas stations; and that this section of Hoosick Road is not Wolf Road, being only two traffic lanes with a center turn lane. Ms. Germain stated that a very nice neighborhood with well-maintained single-family homes is at risk, including homes on Coolidge Avenue, Mellon Avenue, and Film Avenue, which have now been subjected to pass-through traffic trying to avoid the congestion on Hoosick Road. Ms. Germain stated that the Sycaway section of Brunswick is taking a beating with commercial development, and questions the need for an additional gas station at this location. Mark Collins raised a question regarding the public notice for public hearings in general, indicating that the Town website included the public hearing notice only within a few days of the meeting. Mr. Collins was informed that the legal notification requirements include only the Town signboard and publication in the official newspaper for the Town. Mr. Collins thanked the Board for that information. Chairman Steinbach asked whether there were any questions by the Zoning Board members for the applicant. Member Clemente asked about issues raised during the public hearing, including whether the traffic from the existing Advance Auto Parts store was taken into account in the traffic study, noting that this had been raised by Ms. Harbour. Ms. Holsberger stated that the Advance Auto Parts store had already been built and was operating when the actual traffic counts were taken, and so the traffic associated with the auto parts store was considered; Ms. Holsberger also stated that other projects that have been approved but not yet built were also accounted for in the traffic report. Member Clemente also asked about the issue raised by Ms. Germain as to the need for another gas station in the immediate vicinity. Attorney Bitter stated that Cumberland Farms does perform a statistical analysis for each store location, and has determined that this location will be supported despite the location of additional gas stations in the vicinity; that the side of the road which both existing and proposed gas stations are located is also a significant factor when determining new store locations; and that even the number of pumps being proposed was

considered during the statistical analysis. Chairman Steinbach asked about the determination for the need of any traffic signal on Hoosick Road. Ms. Holsberger stated that the determination to install traffic lights or other traffic control devices is made by NYSDOT, which assesses whether a project meets certain warrants, which may include analysis of AM and PM peak periods, four-hour periods, eight-hour periods, safety warrants, and/or pedestrian warrants; and that even if certain warrants are met, NYSDOT may conclude that a traffic light is not the correct traffic mitigation; but that in this case, the proposed Cumberland Farms does not meet any of the NYSDOT warrants for a traffic light installation. Chairman Steinbach noted for the record that NYSDOT determines whether a traffic light is installed on Hoosick Road, not the Town of Brunswick. Chairman Steinbach inquired as to procedural options for the Zoning Board of Appeals. Attorney Gilchrist stated that one option for the Board to consider is, given the discreet issues raised during the public hearing, the Zoning Board could consider closing the public hearing but require the applicant to respond to the public comments in writing on the record. Attorney Bitter concurred, stating that the applicant will respond to the public comments in writing, and that specifically she will confirm with Cumberland Farms as to any sound data in the event music is proposed to be used in the area of the gas pumps. Attorney Gilchrist also stated that a recommendation from the Rensselaer County Department of Economic Development and Planning must be received on this application before any action is taken by the Zoning Board. Chairman Steinbach thought that it was appropriate to close the public hearing but require the applicant to respond to public comments in writing. Member Schmidt made a motion to close the public hearing on the special use permit application submitted by Cumberland Farms, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. The Zoning Board determined that the applicant must respond to the public comments in writing. This matter is placed on the January 23 agenda for further discussion. In this regard, the

Zoning Board members unanimously determined to move the January meeting from January 16 to January 23, to honor the Martin Luther King Day holiday.

The next item of business on the agenda was the special use permit and use variance application submitted by Cellco Partnership d/b/a Verizon Wireless for a proposed major telecommunications facility located proximate to the intersection of Creek Road and Menemsha Lane. David Brennan, Esq., Project Attorney, and Sarah Coleman, Site Acquisition Specialist, were present for the applicant. Attorney Brennan stated that the project was last before the Zoning Board of Appeals at its October meeting, and that Verizon did respond to an initial comment letter prepared by Laberge Group, and that a subsequent submittal was made by Verizon but was not available for review by Laberge Group prior to the November meeting of the Zoning Board. Subsequent to the November meeting, Attorney Brennan stated that Laberge Group had reviewed the supplemental submission, and had generated an additional review letter dated December 14, 2016, to which Verizon will require additional written responses. Attorney Brennan stated that time will be needed to prepare the supplemental responses by Verizon, which will then need to be reviewed by Laberge Group, and that while the matter might be ready for further discussion at the Zoning Board's January meeting, it is likely that this matter will be ready for further discussion at the Zoning Board's February meeting. Chairman Steinbach asked whether Verizon is still proposing the same type of tower at the same preferred location. Attorney Brennan stated that the proposal remains as originally submitted, and generally reviewed the three alternative locations on the project site parcel. Attorney Brennan indicated that Laberge Group has also requested a consideration of other available sites, and that an RF frequency analysis will need to be performed concerning alternate site locations. Ronald Laberge, P.E., of Laberge Group was present, and generally reviewed his letter dated December 14. Mr. Laberge did reiterate the comment that alternative sites should be considered, including additional

land that is zoned A-40 to the east, which provides for major telecommunications facilities as a permitted use, rather than requiring a use variance for R-40 Zoning Districts. Mr. Laberge indicated that he will work with Verizon RF engineers to identify alternative sites for analysis. Member Clemente inquired as to a project review timeline. Attorney Gilchrist generally reviewed special use permit review timeframes, with which Attorney Brennan concurred, with Attorney Brennan adding that even if the Zoning Board was not timely acting on the application, his client's only option would be to seek court intervention to require that a determination be made, with the New York Town Law not providing any default approval for failure to timely act. Attorney Brennan also stated that under the Federal Telecommunications Act, the law does require that cellular tower applications be reviewed timely, but that this application is being timely reviewed by the Zoning Board, and that Verizon is interested in working with the Town to make sure that the application is complete and ready for public hearing. Attorney Brennan did state that Verizon will be responding to the December 14 Laberge Group comment letter in writing. Attorney Brennan did raise one issue concerning the collapse zone requirements under the Brunswick Telecommunications Local Law, which requires a collapse zone equal to the tower height plus 30 feet, which in this case is 180 feet as currently proposed. Attorney Brennan stated that rather than restricting the use of surrounding land, Verizon may seek to propose an option which includes a break point in tower construction so that the full collapse zone is not required to be 180 feet, which will not unduly restrict surrounding land from use. Attorney Brennan did state that this would be subject to review and consideration by the Town. Attorney Brennan requested that the matter be placed on the Zoning Board's January agenda, but that in the event it is not ready for further discussion at the January meeting, that the matter then be carried over to the Zoning Board's February meeting. The Zoning Board agreed with this procedure. The Zoning Board did entertain a comment from Bob Ashe, 126 Menemsha Lane, who requested that

Verizon repeat the balloon test for the proposed tower locations on notice to the neighbors, to allow the neighbors to actually see the proposed tower height from their homes. Following discussion, it was determined that the Zoning Board and Mr. Laberge will work with the applicant to determine appropriate locations for a supplemental balloon test, which Attorney Brennan indicated was agreeable to Verizon, and that the appropriate time with appropriate notification to neighbors will be discussed. This matter is placed on the January agenda for further discussion.

Three items of new business were discussed.

The first item of new business discussed was a referral from the Brunswick Town Board in connection with an application to amend the existing Brunswick Plaza Planned Development District. Gregg Ursprung, P.E., of Bergmann Associates, and Steven Powers of Nigro Companies, were present for the applicant. Mr. Ursprung presented an overview of the proposal. Mr. Ursprung explained that the plaza owner recently purchased two parcels in front of the Brunswick Plaza and adjacent to Hoosick Road, and that the current proposal was to amend the PDD district boundary to add approximately .33 acres from the PDD to the recently-purchased parcels in order to make them more developable and marketable. Mr. Ursprung stated that the only proposed amendment is adjusting the boundary of the PDD, which does require Town Board approval. Mr. Ursprung stated that the two out-parcels in the front are not part of the existing Brunswick Plaza PDD, and are not proposed to be added to the Brunswick Plaza PDD, but rather to remain as a separate commercial parcel adjacent to Hoosick Road in front of the Brunswick Plaza. The Zoning Board members indicated that they had only received the application materials at this meeting. It was determined that this matter will be placed on the January agenda for the Zoning Board, noting that the proposed PDD amendment is also pending before the Brunswick Planning Board for recommendation, and that the Planning Board recommendation should be completed at Planning Board meetings held January 5

and January 19, and should be available for the Zoning Board to review at its January 23 meeting. This matter is placed on the January agenda for further discussion.

The second item of new business discussed was a referral from the Brunswick Town Board concerning a proposed amendment to the Hudson Hills Planned Development District. William Hoblock of Capital District Properties was present for the applicant. Mr. Hoblock stated that the Hudson Hills PDD amendment application is subject to the same procedure as the prior Brunswick Plaza PDD amendment proposal. Mr. Hoblock reviewed the application materials, which include several exhibits from the underlying PDD approval. Mr. Hoblock explained that the underlying Hudson Hills PDD was approved in 2007. Part of the PDD approval included the requirement to construct two youth baseball fields on a separate 25-acre parcel as a public benefit, and after construction to dedicate the recreation fields and the 25-acres to the Town of Brunswick at no cost. Mr. Hoblock explained that the application to amend the current Hudson Hills PDD approval is to modify the public benefit to eliminate the construction of the two youth baseball fields, and to replace that public benefit with the payment of a fee. Mr. Hoblock stated that circumstances had changed in the Town of Brunswick since the 2007 PDD approval, including the fact that in 2007, the Route 2 recreation fields were facing regulatory issues concerning wetlands compliance, but that subsequent to the 2007 approval the wetlands issues were resolved and those fields would continue to be used for recreation purposes, and further that an additional little league field had been built in the intervening years. Mr. Hoblock stated that currently, the Town of Brunswick has different needs for recreational purposes, and that the payment of a fee for other recreation projects in the Town is appropriate. Mr. Hoblock stated the applicant is proposing to pay a public benefit fee of \$300,000.00, to be used by the Town of Brunswick for recreation purposes as it sees fit. Mr. Hoblock confirmed that there was no further amendment proposed, that there was no proposed change to the apartment count or layout,

and that there will be no change to the SEQRA environmental impact analysis which had been previously completed. This matter is also placed on the January agenda for further discussion on a recommendation to the Town Board, noting that the Hudson Hills PDD amendment will likewise be addressed by the Planning Board at its meetings held January 5 and January 19, anticipating that the Planning Board recommendation will be complete and available for review by the Zoning Board at its January 23 meeting.

The third item of new business discussed was a special use permit application submitted by Stewart's Shops for property located at 1001 Hoosick Road. Chad Fowler of Stewart's Shops was present for the applicant. Mr. Fowler generally reviewed the proposal, which includes construction of a new 3,675 square foot Stewart's Shop with gas pumps, canopy, vehicular access, and parking. Mr. Fowler explained that the special use permit is required in connection with the proposed gas pumps and canopy. Mr. Fowler also generally reviewed the proposed access from Hoosick Road and Sweetmilk Creek Road, indicating that construction of a center two-way left turn lane on Hoosick Road is proposed and pending for review by NYSDOT, and that a full two-way center lane is required for full access to the proposed Stewart's store from Hoosick Road. Mr. Fowler generally explained that the existing Stewart's Shop at the intersection of Hoosick Road and Route 142 has been operating since 1977, but that the industry has changed for convenience-type stores to now promote prepared food, beverages, and gasoline sales, and that the current site is simply too small to meet current industry trend. Mr. Fowler did state that Stewart's preferred the current location, but there is simply not enough room to expand, and that the necessary acreage surrounding the current Stewart's site is not available for acquisition. Mr. Fowler stated that the alternative site is being proposed, to stay in the general location of the existing Stewart's store. Mr. Fowler then generally discussed the proposed architecture and layout of the Stewart's store, which will be similar to the recently-constructed new

Stewart's store in Cropseyville at the intersection of Route 2 and Route 278. The Zoning Board indicated it had only received the application materials, and placed the matter on the January agenda for further discussion. The Zoning Board will request a formal recommendation from the Planning Board on the special use permit, which should be received prior to the January 23 Zoning Board meeting.

The index for the December 19, 2016 meeting is as follows:

1. Cumberland Farms - Special use permit - January 23, 2017;
2. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance - January 23, 2017;
3. Brunswick Plaza PDD Amendment - Referral from Town Board - January 23, 2017;
4. Hudson Hills PDD Amendment - Referral from Town Board - January 23, 2017;
5. Stewart's Shops - Special use permit - January 23, 2017.

The proposed agenda for the January 23, 2017 meeting currently is as follows:

1. Cumberland Farms - Special use permit;
2. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance;
3. Brunswick Plaza PDD Amendment - Referral from Town Board;
4. Hudson Hills PDD Amendment - Referral from Town Board;
5. Stewart's Shops - Special use permit.