

# **Planning Board**

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

## **MINUTES OF THE PLANNING BOARD MEETING HELD JULY 6, 2017**

PRESENT were RUSSELL OSTER, CHAIRMAN, FRANK ESSER, KEVIN MAINELLO, TIMOTHY CASEY, and MICHAEL CZORNYJ.

ABSENT were VINCE WETMILLER and DAVID TARBOX.

ALSO PRESENT were CHARLES GOLDEN, Brunswick Building Department, and WAYNE BONESTEEL, P.E., Review Engineer to the Planning Board.

Chairman Oster reviewed the agenda for the meeting as posted on the Town signboard and Town website.

The draft minutes of the June 15, 2017 meeting were reviewed. Upon motion of Member Czornyj, seconded by Member Casey, the draft minutes of the June 15, 2017 meeting were unanimously approved without amendment.

The first item of business on the agenda was the minor subdivision application submitted by David Leon for property located at 660 and 670 Hoosick Road. Chairman Oster indicated that Attorney Gilchrist had been continuing research regarding the status of the paper street that provides frontage to the rear proposed 15-acre lot and that the factual and legal investigation had not yet been fully completed. Chairman Oster noted that Attorney Gilchrist was planning to meet with the Town Attorney and Town Highway staff concerning the status of the paper street. Chairman Oster noted that the Planning Board was going to continue the public hearing at its July 20, 2017 meeting. Several residents inquired whether the public hearing would continue on July

20 or would be further adjourned. Chairman Oster explained that the Planning Board intends that the public hearing continue on July 20, but that in the event the investigation into the status of the paper street was not yet complete, there was a possibility that it could be further adjourned. Chairman Oster invited residents to attend the July 20 public hearing to provide their comments at that time, when the applicant was present and presuming the issue concerning the paper street was resolved by then. Attorney Tingley advised the residents that they could also submit comments in writing to the Planning Board to be included in the public hearing record, or attend the next Planning Board meeting on this matter to submit oral comments if the public hearing was able to proceed at that time. The matter was placed on the July 20 agenda for continuation of the public hearing on the minor subdivision application.

The next item of business on the agenda was the site plan application submitted by Chip Bulson concerning property located at 63 Indian Creek Lane. Mr. Bulson and Paul Engster, Esq. were present for the applicant. Attorney Engster indicated that he had had a conversation with Attorney Gilchrist during which Attorney Gilchrist had advised that the Town had adopted a new Zoning Law that would govern the application. Attorney Engster acknowledged that when the application was filed, the applicant was aware that a new zoning law was then under consideration. Attorney Engster stated that the applicant had applied in April of 2017. Attorney Engster stated that it was his legal opinion that the Town should apply the zoning law that was in effect at the time that the application was made. Attorney Engster indicated that he does not know whether or not the Zoning Law is actually in effect. Attorney Engster explained that the applicant had analyzed whether the project would be profitable based upon allowing 18 guests to stay overnight. In the event that the Town disagrees that the new Zoning Law does not apply to the application, Attorney Engster indicated that the applicant reserves its rights to have that determination by the

Town reviewed either administratively or in a court of law. However, Attorney Engster also noted that he believes that the applicant would be entitled to a variance under the circumstances presented in light of the hardship imposed by adoption of the new Zoning Law with respect to this property. Attorney Engster noted that the applicant reserves his right to argue that the Zoning Law which was recently adopted by the Town Board does not apply, but also that the applicant may be seeking a variance. Attorney Engster stated that since the last Planning Board meeting, the Building Department and Highway Department had met on this site to investigate the condition of Indian Creek Lane, which is a highway-by-use. Mr. Engster indicated that he acknowledges that the meeting that occurred is not adequate with respect to what the Planning Board had requested at the prior meeting, which envisions the attendance of the Planning Board engineer, members of the Planning Board, the Highway Department, the Building Department, and representatives of the Center Brunswick Fire Department. Attorney Tingley stated that the Planning Board was required to apply the law as it existed at the time of its decision on the application, not the law in effect at the time that the application was made. Attorney Tingley stated that this means that the new Zoning Law, which has been adopted by the Town Board and which has been filed with the New York State Department of State, was in effect currently and that the application would be governed by the new Zoning Law. Attorney Tingley stated that the zoning law would allow a bed-and-breakfast by special use permit, and that there were certain regulations applicable to bed-and-breakfast facilities, including owner-occupation, no more than six rooms for rent, breakfast service only, among others. Attorney Tingley further noted that the new Zoning Law required the applicant to submit a special use permit application which would identify the characteristics of the proposed use and upon submission of such an application, the Building Department would be in a position to determine whether or not any area or use variances would be required. Attorney

Tingley identified certain characteristics of the project as previously proposed that did not comply with the regulations under the new Zoning Law, and indicated that if the applicant intended to proceed with the same proposal, then the application would likely require certain variances. Attorney Engster stated that he believed that the applicant would be entitled to a variance, and reserving its right to argue that the new Zoning Law does not apply, would proceed with a special use permit application for the project. Member Czornyj asked whether a special use permit would be required if the Building Department determined that the project did not comply with the applicable Zoning Law and then the Zoning Board of Appeals granted a variance. Attorney Tingley stated that it was his legal opinion that the project would still require a special use permit, assuming that the variance sought and granted was an area variance. Following a brief recess requested by the applicant, Attorney Engster stated that he believed that the Zoning Law in effect at the time the application was made applies to the application, because in his opinion and analogizing to criminal law, a law should not be applied retroactively. Attorney Engster and Attorney Tingley agreed that they had a difference in legal opinion as to which law applied to this application. Attorney Engster stated that he now understands the procedures and reserving his rights, will pursue the special use permit application and, if necessary, any variance applications. Member Esser asked whether the new Zoning Law permitted six total bedrooms or six bedrooms plus the owner's and family's bedroom(s). Attorney Tingley explained that the definition of bed-and-breakfast under the new Zoning Code limits a bed-and-breakfast to six total rooms for rent. This means that the building can contain additional bedrooms, but those bedrooms cannot be used for the bed-and-breakfast business. Attorney Engster asked whether the Planning Board would still be willing to progress the field investigation of Indian Creek Lane while the special use permit and, if necessary, variance applications were being pursued. Attorney Tingley explained to the

Board that it was a matter within the Planning Board's discretion, however the Board should consider that if the Building Department denies the application due to noncompliance with the applicable Zoning Law, and the Zoning Board of Appeals does not grant the necessary variances, then this application may never be before this Planning Board again. Chairman Oster indicated that he did not have a problem with a field investigation of Indian Creek Lane, as long as everyone that was requested to be in attendance at the prior Planning Board meeting was present. The Board discussed whether such a field investigation of Indian Creek Lane would have any benefit in light of the fact that the Board would not be aware of whether the applicant was seeking a bed-and-breakfast that complied with the applicable Zoning Law, or would be seeking approval of a project that exceeded or was different from what the current Zoning Law allows. Attorney Tingley explained that if the Board wishes, the field investigation can be done and the factual condition, including surfacing, width, and drainage at various stations along Indian Creek Lane could be documented, but any opinions as to the sufficiency of the road for any particular use would be premature. Member Esser requested that the applicant make sure that the fire department have representatives at any field investigation that occurs. Mr. Bonesteel indicated that he had no issue with performing a field investigation of Indian Creek Lane at this time, however he would simply be there to document what the existing condition was. Chairman Oster asked whether the applicant requested to be on the Planning Board agenda for July 20. The applicant indicated that it was requesting to be on the agenda for July 20. This matter has tentatively been placed on the agenda for the July 20 Planning Board meeting for further discussion.

There was one item of new business on the agenda, a waiver of subdivision application made by Jeff Stannard for property located at 303 and 307 Town Office Road. Mr. Stannard explained that Eleanor Stannard has a life estate interest in the property, and that Jeff Stannard,

along with others, has a remainder interest in the property. The property currently is one tax map parcel and one lot on which sit two homes. The application seeks to create two lots, with each lot having one of the homes. Mr. Stannard indicated that Eleanor Stannard has moved from the premises and the family was seeking to sell one of the homes. The Planning Board asked what the zoning was at the location, to which the applicant responded that the area was zoned R-25. The Planning Board asked what the frontage and lot size requirements were for the R-25 Zoning District. Attorney Tingley indicated that, based on his initial review, the new Zoning Law's area and bulk regulations table did not appear to set a minimum frontage requirement, however it did establish a minimum lot width and minimum lot size. The minimum lot width applicable in the R-25 zone is 120 feet and the minimum lot size is 25,000 square feet. Attorney Tingley explained that the definition of lot width in the Zoning Code required the width of the lot to be measured at the front of the existing or proposed principal structure parallel to the front lot line. The Planning Board indicated that the application as submitted did not comply with the minimum lot width and suggested that the applicant would need to seek a variance. The Planning Board also suggested that in a variance application the applicant might consider seeking a variance for minimum lot size so as to allow creation of two new lots that were both rectangular in shape, rather than the currently proposed lots which include an irregularly-shaped Parcel A. Attorney Tingley further indicated that the application did not appear to contain the written consent of the life tenant, and if that was available, then the applicant should submit it. If the written consent of the life tenant is not available, then legal research would need to be done into whether the consent of a future interest holder was sufficient. The applicant indicated that he will submit the written consent of the life tenant. In light of the need for one or more variances with respect to the proposed waiver of

subdivision application, this matter was adjourned without date, pending a resolution of those issues by the Zoning Board of Appeals following a duly filed application.

The index for the July 6, 2017 meeting is as follows:

1. Leon - Minor subdivision - July 20, 2017 (public hearing to continue at 7:00pm);
2. Bulson - Site plan - July 20, 2017;
3. Stannard - Waiver of subdivision - Adjourned without date.

The proposed agenda for the July 20, 2017 meeting currently is as follows:

1. Leon - Minor subdivision (public hearing to continue at 7:00pm);
2. Bulson - Site plan.