

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 21, 2015

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

ALSO PRESENT was MICHAEL CZORNYJ, Brunswick Building Department.

The Zoning Board Members reviewed the draft minutes of the November 16, 2015 meeting. Upon motion of Member Trzcinski, seconded by Member Schmidt, the draft minutes of the November 16, 2015 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Raymond Bronk for property located at 147 Brunswick Road. The applicant seeks an area variance from the side yard setback requirements for the R-15 Zoning District for the location of a shed at this property. At the November 16, 2015 meeting, the Zoning Board held a public hearing on the area variance application, and closed the public hearing on November 16. During deliberations on this application, the Zoning Board members suggested that the applicant meet with the Building Department to discuss alternate locations for the shed on the property. Mr. Czornyj confirmed that he had met with Mr. Bronk, and that Mr. Bronk agreed to relocate the shed to a location further west on the lot that is 12 feet from the side lot line. Mr. Bronk confirmed this discussion with Mr. Czornyj and stated on the record that he agrees to place the shed in a location on the lot that is 12 feet from the side lot line. Mr. Czornyj confirmed that a 15 foot side yard setback is required in the R-15 Zoning District, and therefore an area variance of 3 feet from the side lot setback is

required for this proposed alternate location for the shed. Chairman Steinbach stated that he felt the alternate location was an improvement, and did not require a substantial variance from the side yard setback requirement. The ZBA members concurred in that statement. Chairman Steinbach asked if there were any further comments from either the applicant or members of the Zoning Board. There were no further comments. The Zoning Board concluded that an area variance of 3 feet from the side yard setback requirements for this location would not result in any undesirable change in the character of the neighborhood; would not create a detriment to nearby properties; that the alternate location resulting in a 3 foot side yard setback variance was a reasonable and feasible alternative to the proposed original location for the shed; that the resulting 3 foot variance from the 15 foot side yard setback was not substantial; that this area variance will not have an adverse effect on the physical or environmental conditions in the neighborhood; and that given the peculiar shape of this lot, the difficulty resulting in the need for the area variance was not self-created. Based on these findings, Member Shover made a motion to grant a 3 foot variance from the side yard setback requirements for this location, 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 an area variance application submitted by Todd O'Connor for property located at 111 Leverage Road. Mr. O'Connor was present. Chairman Steinbach inquired whether there were any changes to the application. Mr. O'Connor said there were no changes to the application, and that he was seeking a variance for height in connection with the installation of a two-car garage at this location. Mr. Czornyj confirmed with the Zoning Board members that a garage had existed in this location, but had been damaged when a car drove into the garage, and the garage was damaged to an extent that it needed to be torn down. Mr. O'Connor is proposing to reconstruct a garage in the same location, have the garage be 24 feet by

24 feet, and a height of 18.5 feet. The Town Code limits height for structures at this location to 12 feet. Mr. Czornyj confirmed that the prior garage at this location was also higher than 12 feet, but was lower than 18.5 feet. The Zoning Board opened the public hearing on this application. The Notice of Public Hearing 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 properties. Chairman Steinbach opened the floor for the receipt of public comment. No members of the public wished to comment on this application. Upon motion of Member Clemente, seconded by Member Shover, the motion to close the public hearing on the O'Connor area variance application was unanimously approved. Attorney Gilchrist stated that this application seeks an area variance in connection with a single-family residence, and therefore constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. The Zoning Board members then proceeded to deliberate on the area variance application. Member Clemente commented that the replacement of a garage in that location will not change the character of the neighborhood, as a garage had been in that location previously. All Zoning Board members agreed with that comment. Member Trzcinski stated that this will not change the character of the neighborhood, and there were no complaints from any of the neighbors. Chairman Steinbach stated that there would be no environmental impact or impact to the physical conditions in the area, and that the difficulty requiring the variance was not necessarily self-created as the need to replace the two-car garage was as a result of a car hitting the garage and damaging the prior garage structure. Member Schmidt felt that the variance was not substantial, in particular because the grade of this lot was at a lower grade than the public road, and the height of the structure will not have as significant an effect as may be the case if the lot grade was at the grade of the public road. Member Clemente also noted that the location of the garage did not overlook any other home or

structure, and would not have any visual effect to the neighborhood. Based upon these deliberations, Member Shover made a motion to approve the area variance allowing for the construction of an 18.5 foot high two-car garage at this location. The 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 an area variance application submitted by William Barber for property located at 121 Brunswick Road. The applicant seeks an area variance to allow the continuation of construction of a garage structure requiring a side yard setback variance. It is noted for the record that this lot also constitutes a corner lot. The Zoning Board opened a public hearing on the 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 asked if the applicant was present. Damon DiGiovanni, an employee of Abar Construction, a company owned by Mr. Barber, was present. Mr. DiGiovanni stated that Mr. Barber was not present at the meeting, and had requested him to come to this Zoning Board meeting. Attorney Gilchrist stated that there is nothing on file with the Town on this application to authorize Mr. DiGiovanni to represent the property owner, and that the property owner should be present on the application. Attorney Gilchrist recommended to the Zoning Board members that it receive any comment from members of the public who attended this meeting, but to leave the public hearing open until the January meeting of the Zoning Board of Appeals so that the property owner can be present at the public hearing on the application. The Zoning Board members concurred in this approach. Chairman Steinbach asked if any members of the public present at the meeting wished to provide comment on this application. No members of the public wished to provide any comment on this application at this time. Member Trzcinski asked Mr. DiGiovanni

as to how long Mr. Barber's construction company had been in business. Mr. DiGiovanni stated that the construction company had been in business for a long time. Member Trzcinski then commented that given his experience, Mr. Barber should have known that a building permit was required for this garage structure, and that if a building permit had been applied for, he would have known about the side yard setback requirements before the construction started. This comment was noted for the record. The Zoning Board members held this public hearing open, and the public hearing will be reconvened and continued at its meeting held January 25, 2016. The continuation of the public hearing will commence at 6:00 PM.

The next item of business on the agenda was an area variance application submitted by Daniel Smith for property located at 899 Hoosick Road. Mr. Smith was present on the application. Chairman Steinbach asked whether there were any changes to the application. Mr. Smith confirmed that 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 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 then opened the floor for receipt of public comment. Robert Panasci, Esq., an attorney with Young Sommer LLC, was present representing William and Margaretha Brazee, owners of property adjacent to 899 Hoosick Road. Mr. Panasci handed up a comment letter dated December 21, 2015, which attached three exhibits. Attorney Panasci reviewed his comment letter, addressing issues concerning allowable lot coverage for accessory structures, expansion of non-conforming structures under the Brunswick Town Code, a survey showing encroachment of the garage structure constructed by Mr. Smith on to the Brazee property, and also drainage and flooding which Brazee states has occurred on the Brazee property as a result of construction of the garage structure

by Smith on the Smith lot. Attorney Panasci also handed up additional photographs of drainage and flooding conditions which Brazee alleges occurs on the Brazee lot as a result of the construction of the garage on the Smith property. Attorney Panasci stated that his clients had owned their property for 17 years, and never had standing water on their property until the garage structure was constructed by Mr. Smith. A full copy of the Brazee survey was provided to the Zoning Board for the record in this matter. Attorney Gilchrist observed that the comment letter submitted by attorney Panasci raises several issues, including whether any additional variances for percentage of total lot coverage are required for the Smith lot, as well as legal issues concerning expansion of non-conforming structures under the Brunswick Town Code. Attorney Gilchrist recommended that the Zoning Board direct the Building Department to investigate the issue of any additional variances that may be required concerning the garage structure on the Smith lot, and also provide an opportunity for attorney Gilchrist to further research the legal issues raised in the letter submitted by attorney Panasci. The Zoning Board members concurred in this approach. Attorney Gilchrist also noted for the record that a survey had been submitted by Mr. Panasci on behalf of Brazee for the record in this matter, and a survey had also been prepared and submitted by Smith in this matter. Attorney Gilchrist recommended that the Zoning Board members review the surveys that have been submitted in this matter. Mr. Smith requested the opportunity to look at the photographs submitted by attorney Panasci depicting drainage and flooding conditions. Mr. Smith stated that he also has photographs showing drainage and stormwater flow, and that his pictures are dated, and that he will provide those photographs to the Zoning Board for consideration. The Zoning Board determined to hold the public hearing open in this matter, and to continue the public hearing in this matter at the Zoning Board meeting to be held January 25, 2016, with the continuation of the public hearing to occur at 6:15 PM.

The next item of business on the agenda was an area variance application submitted by Thomas Healy for property located at 2 Carla Lane. Mrs. Healy was present for the application. Chairman Steinbach asked whether there were any changes to the area variance application. Mrs. Healy stated there were no changes. This application seeks both a side yard and rear yard setback variance to allow the installation of a shed in the rear yard of this 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 was published in the Troy Record, placed on the Town Signboard, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach then opened the floor for receipt of public comment. There were no members of the public who wished to provide comment on this application. Member Clemente asked whether the shed would be placed on a concrete slab. Mrs. Healy stated that a concrete slab would not be used, but that the shed would be placed on crushed stone. Member Schmidt asked how high the shed was going to be. Mrs. Healy said she didn't know the exact height, but that it would be about 8 feet tall. Mr. Czornyj confirmed that there was no issue concerning the height of the shed at this location. Chairman Steinbach asked whether the shed would be a pre-fabricated shed delivered to the property. Mrs. Healy stated that it would be a pre-fabricated shed, and there would not be any on-site construction. Hearing no further comments from the public, Member Shover made a motion to close the public hearing on the Healy variance application, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing closed. Attorney Gilchrist stated that this 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 members then proceeded to deliberate on the variance application. Chairman Steinbach stated that the placement of the shed in this location

would not result in any environmental impact issues, and did not feel that any public health impacts would result. Member Clemente stated that placing a shed in the rear yard at this location would not result in any change in the character of the neighborhood or create any detriment to nearby properties. Chairman Steinbach concurred, saying that the lots in this area were generally small and installation of sheds in the rear yards often raised setback issues. Member Clemente stated that she felt this was the logical location for the placement of a shed in the rear yard of this lot. The Zoning Board members did feel the requested variances were substantial, as the proposed location of the shed will be 5 feet from the rear yard and 5 feet from the side yard lines, whereas a setback of 20 feet from the rear yard line and 15 feet from the side yard line are required. However, the Zoning Board members did feel that this location of the shed in the rear yard was the logical location and not out of character with the surrounding properties, and also noted that an existing fence will shield this shed from surrounding properties. The Zoning Board members did feel that the need for the area variance was self-created, but felt that this element was not determinative in this case. Chairman Steinbach also noted that none of the neighbors to this property came to comment on the application, even though each was sent a notice. Mrs. Healy stated that her husband had spoken to the neighbors, and there was no opposition to the placement of the shed as proposed. Based on these deliberations, Member Clemente made a motion to approve the rear yard setback variance and side yard setback variance in this case, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variances granted.

The next item of business on the agenda was the area variance and sign variance applications submitted by PF Management Group for property located at 668 Hoosick Road. The applicant seeks to demolish existing buildings at this location, and construct two new commercial buildings, including a 17,800 square foot building for a proposed Aldi grocery store and a 2,200

square foot commercial building proposed for a Taco Bell restaurant. David Leon, owner of PF Management Group, was present on the application, together with Chris Kamar, of APD Engineering. Mr. Kamar generally reviewed the requested variances, including variances for parking spaces, both in terms of total lot space count as well as the size of the spaces, together with additional variances for signage. With regard to the parking space variance request, Mr. Kamar explained that the Brunswick Town Code requires a total of 126 spaces for the proposed commercial buildings at this location, whereas the applicant is seeking to construct 106 spaces, together with a cross-easement for vehicular traffic flow and parking to the property to the west on which the Planet Fitness facility is located. In terms of the size of parking space, Mr. Kamar stated that the Town Code required a 200 square foot parking space, while the applicant is proposing a standard parking space of 9 feet by 18 feet in size. In terms of the sign variances, Mr. Kamar generally reviewed the requested variances, including the height of a pole sign, size of the pole sign, setback of the pole sign from the lot line, as well as the total number of building mounted signs. Mr. Leon also stated that in the adjacent Planet Fitness facility, a total of 121 parking spaces exist, and under the Brunswick Town Code, only a total number of 81 spaces are needed for the Planet Fitness facility, and therefore an excess of parking is available for 668 Hoosick Road on the Planet Fitness site. Mr. Leon also stated that the parking spaces on the Planet Fitness site are also 9 feet by 18 feet in size, and there are other locations in the Town of Brunswick where a parking space size of 9 feet by 18 feet was allowed, including the Wal Mart parking lot. The Zoning Board opened the public hearing on this 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. The Zoning Board opened the floor for receipt of public comment. Bonnie Fucci, Kiloch Avenue,

commented as to the need for so many extra signs along the Hoosick Road corridor, that Hoosick Road is not attractive and we don't need any more signs; and questioned why variances are allowed if regulations are put in place to limit the total size and total number of signs. Chairman Steinbach briefly commented that the Zoning Board of Appeals does entertain variances from Zoning Code requirements and sign regulation requirements, and deals with each application on a case-by-case basis based on the facts of the particular circumstance. No further public comments were offered. Attorney Gilchrist stated that in the event the public hearing was closed, the Zoning Board will need to make a determination on both the parking variance request and the sign variance request within 62 days. Attorney Gilchrist noted that it has been the general practice and procedure of the Zoning Board and Planning Board to entertain sign variance applications after the Planning Board has reviewed and acted on the site plan, as issues concerning site layout, building layout, access driveway location, and greenspace requirements often impact sign location and type, and the sign variance requests have, in past practice and procedure, routinely followed action by the Planning Board on the site plan. Attorney Gilchrist did note that the requested variance concerning parking space size and parking space count did have a direct relation to the site plan, and the Zoning Board should be in a position to act upon the variance concerning parking in order to allow the site plan review process to proceed. The Zoning Board members asked whether the public hearing could be closed at this meeting. Attorney Gilchrist stated that the public hearing could be closed, but the Zoning Board should request an extension from the applicant, upon consent, to extend the 62 day time period in which to make a determination on the sign variance application. The applicant consented on the record to extend the time period in which the Zoning Board must make a determination on the sign variance application beyond the 62 day time frame required under the applicable law. With such consent from the applicant, the Zoning Board members proceeded to

close the public hearing on the variance applications in this matter. Member Schmidt made a motion to close the public hearing on both the sign variance application and parking variance application upon the condition that the applicant has consented to extend the time period in which the Zoning Board must make a determination on the sign variance application. That motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. Attorney Gilchrist then stated that the Zoning Board must make a SEQRA determination if it sought to act on the parking space variance application. In terms of any potential significant adverse environmental impact, the Zoning Board members determined that the parking space variance application reduced the amount of impervious surface, resulting in less stormwater runoff, and increased greenspace area on the project site. The Zoning Board members generally concurred that with respect to the parking space variance application, there was not the potential for any significant adverse environmental impacts resulting from that action. Member Steinbach then made a motion to adopt a negative declaration under SEQRA with respect to the parking space variance application, which motion was seconded by Member Schmidt. The motion was unanimously approved, and a negative declaration adopted with respect to the parking space variance application. The Zoning Board then proceeded to deliberate on the parking space variance application. Member Schmidt felt that the parking space variances would not result in an undesirable change in the character of the area nor create a detriment to nearby properties, expressly relying on the cross-easement for traffic flow and parking with the Planet Fitness facility located to the west. Chairman Steinbach felt that the development of this location was a continuation on the commercial development of the Hoosick Road corridor, and would not result in any change in the character of that location, and that by granting the variances for parking space size and total count, the site would have greater opportunity for landscaping and additional

greenspace. The Zoning Board members also noted that while the lot could accommodate additional parking areas, and therefore an alternative was available, the cross-easement for traffic flow and parking with the Planet Fitness facility located to the west was an important mitigating factor, and also provided for additional greenspace on the 668 Hoosick Road site. Member Trzcinski noted that she felt customers of the grocery store would not want to park at the Planet Fitness facility and walk over to the grocery store. Member Schmidt stated that he felt that the parking for the grocery store on the 668 Hoosick Road site would probably be adequate, and that the additional parking at the Planet Fitness would be for overflow traffic only. The Zoning Board members generally concurred that the requested variance on the total parking space count was not substantial, being less than 20%. On this factor, the Zoning Board again found an important mitigating factor to be the existence of a cross-easement for access and parking with the Planet Fitness facility located to the west. As to the parking space size, the Zoning Board members did not feel that a 9 foot by 18 foot parking space was a substantial difference to the 200 square foot parking space. The Zoning Board members generally concurred that the parking space variances would not result in any significant impact on physical conditions or the environment, but would rather be beneficial in terms of reducing the total impervious area and additional greenspace opportunities. The Zoning Board members did observe that the requested variances were self-created, but felt that there were several mitigating factors in this case, including the cross-easement for parking with the Planet Fitness facility located to the west. The Zoning Board members also referenced and relied upon the positive recommendation of the Planning Board, both as to total space count and parking space size. Based on such deliberations and findings, Chairman Steinbach made a motion to grant the parking space variances both with respect to parking space size, allowing for a 9 foot by 18 foot parking space, and with respect to total parking space count,

allowing 106 spaces rather than 126 as required under the Brunswick Code. Such motion was expressly conditioned on the cross-easement for traffic flow and parking with the property located to the west on which the Planet Fitness facility is located, with that cross-easement being reviewed by the Town's counsel. Member Shover seconded the motion subject to the stated conditions. The motion was unanimously approved, and the parking space variances were granted subject to the stated condition, both with respect to parking space size and total parking space count. Upon consent of the applicant, consideration of the sign variance applications were adjourned without date, pending review and action on the proposed site plan by the Planning Board.

Three items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Voland Organization, LLC for property located at 830 Hoosick Road. The application seeks a height variance with respect to an ornamental gable-type addition to the flat roof of the existing building located at 830 Hoosick Road. Ken Voland of Voland Organization, LLC was present, and explained that he was making cosmetic changes to the building to give it a more aesthetic appearance, and that in connection with those efforts, he has constructed 3 gable-type façades along the front of the building on the existing flat roof. The center gable-type façade is the tallest, and will be 2 feet over the 30-foot height limit for this location. Member Czornyj explained that Mr. Voland had met with the former Building Inspector for the Town, who informed Mr. Voland that building permits were not required for the façade construction, and therefore these additions had been started without a building permit. Mr. Czornyj then explained that a building permit is required, and he had met with Mr. Voland to review the construction plans, and determined that the center gable-type façade was 2 feet above the height restrictions. Mr. Czornyj confirmed that the structures have been fully engineered, and can be safely constructed, but that the height issue

concerning the center gable-type façade requires consideration of a height variance. The Zoning Board members generally reviewed the application, and found it to be complete to move this matter to public hearing. This matter is scheduled for a public hearing for the January 25, 2016 meeting, to commence at 6:30 PM.

The second item of new business discussed was an application for a special use permit submitted by Kevin Hayes, for property located at 10 Victoria Avenue. Mr. Hayes was present. Mr. Hayes explained that his parents had purchased the home located at 10 Victoria Avenue in 1958, and that his parents have died, and he has inherited this property. Upon looking to potentially sell this property, he was informed that the property is identified in the Town Assessor's Office as a 1-family use, but that the property had been used as a 2-family structure since prior to the time his parents purchased the property in 1958. Mr. Hayes is looking to have the property come into conformance with the Brunswick Code, and seeks a special use permit which is required for a multi-family use. Mr. Hayes explained that the property is in very good condition, sits on a large lot, and has requisite off-street parking. The Zoning Board members reviewed the application materials, and found them to be complete to move this matter forward to public hearing. This matter is scheduled for public hearing for the January 25, 2016 meeting to commence at 6:45 PM.

The third item of new business discussed was a special use permit application submitted by MHH Enterprises, LLC for property located at 1 Cortland Street. Mark Hayamizu of MHH Enterprises was present. Mr. Hayamizu explained that the property at 1 Cortland Street has been used as a 6-unit rental property for several years, but that the Town has no record of a special use permit having been issued for the multi-family use. Mr. Hayamizu explains he is not proposing any changes to the 6-unit building, but is merely seeking to have the property come into compliance and obtain the required special use permit. The Zoning Board members asked whether

the property had been initially constructed as a 6-unit building, or whether the property had been converted at some point in time to a 6-unit use. Mr. Hayamizu did not know, but indicated that the property was used as a 6-unit building when he purchased the property in 2011. He also indicated that the property is assessed by the Town as a multi-family use. The Zoning Board members reviewed the application materials, and found them to be complete to move the matter forward to public hearing. The Zoning Board also requested the Building Department to further research this matter in terms of when the property started to be assessed as a multi-family use. This matter is placed on the January 25, 2016 agenda for public hearing to commence at 7:00 PM.

The index for the December 21, 2015 meeting is as follows:

1. Bronk – Area variance – granted;
2. O’Connor – Area variance – granted;
3. Barber – Area variance – 1/25/2016 (public hearing to continue at 6:00 PM);
4. Smith – Area variance – 1/25/2016 (public hearing to continue at 6:15 PM);
5. Healy – Area variance – granted;
6. PF Management Group – Parking space variances – granted; sign variance adjourned without date with consent of applicant.
7. Voland Organization, LLC – Area variance – - 1/25/2016 (public hearing to commence at 6:30 PM);
8. Hayes – Special use permit application – 1/25/2016 (public hearing to commence at 6:45 PM);
9. MHH Enterprises LLC - Special use permit application - 1/25/2016 (public hearing to commence at 7:00 PM).

The proposed agenda for the January 25, 2016 meeting currently is as follows:

1. Barber – Area variance (public hearing to continue at 6:00 PM);
2. Smith – Area variance (public hearing to continue at 6:15 PM);
3. Voland Organization LLC – Area variance (public hearing to commence at 6:30 PM);
4. Hayes – Special use permit (public hearing to commence at 6:45 PM); and
5. MHH Enterprises LLC – Special use permit (public hearing to commence at 7:00 PM).