

## **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)