

## **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)