

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

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

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

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Smith - Area variance.

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

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