

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 JANUARY 23, 2017

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

ABSENT was E. JOHN SCHMIDT.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The draft minutes of the December 19, 2016 meeting were reviewed. Upon motion of Member Clemente, seconded by Member Sclafani, the minutes of the December 19, 2016 meeting were unanimously approved without amendment.

The Zoning Board members also discussed the February meeting date, in consideration of the President's Day holiday on February 20. The Zoning Board members decided that the meeting will be rescheduled to Monday, February 27, 2017. A notice of special meeting will be posted and published for the February 27 meeting.

Chairman Steinbach noted that the special use permit application submitted by Cellco Partnership d/b/a Verizon Wireless is adjourned until the February 27 meeting, as the applicant is continuing to prepare supplemental information on the application.

The first item of business on the agenda was the special use permit application submitted by Cumberland Farms for a proposed Cumberland Farms store with a 6-pump fuel island at the intersection of Hoosick Road and Hillcrest Avenue. Stefanie Bitter, Esq., project attorney, was present for the applicant, and reviewed the Cumberland Farms application. Attorney Bitter stated that the public hearing on the special use permit application, which is required for operation of the 6-

pump fuel island as part of the project, was held and closed at the Zoning Board's December meeting, and that the applicant had prepared a letter dated January 13, 2017 responding to comments received at the public hearing. Attorney Bitter reviewed the January 13, 2017 correspondence with the Zoning Board members. Attorney Bitter also stated that a letter received from the New York State Office of Parks, Recreation and Historic Preservation dated January 23, 2017 stated that the project does not include potential environmental impacts to New York State park land, and that it is the opinion of OPRHP that the project will have no impact on archeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places. It was noted that the County referral and recommendation process had been completed. Member Clemente asked whether any comments had been received from the New York State Department of Transportation on the traffic study prepared for the project. Wendy Holsberger, of Creighton Manning, project traffic engineers, stated that no comments were received from NYSDOT because there is no need for any approval from NYSDOT for a work permit or any new construction, as the existing access point on Hoosick Road will be utilized in connection with the Cumberland Farms project. Member Clemente asked whether any comments had been submitted by the Brunswick No. 1 Fire Department. Attorney Bitter stated comments had been received from the Brunswick No. 1 Fire Department, but that they pertain primarily to the site plan, and will be addressed during the site plan review to be conducted by the Planning Board. Member Clemente asked about the audio/music used by Cumberland Farms at the gas pumps, and how that comment is addressed by the applicant. Attorney Bitter stated that she had reviewed the matter with Cumberland Farms, and that any complaints regarding the sound level of any music at the pump islands is to be directed to the on-site store manager, that the sound level of the music is controlled on a site-by-site basis, and that the on-site store manager will be able to control the volume. Attorney Bitter did state that she reviewed the comment concerning the audio level at the Latham Cumberland Farms store, and that the audio level at that store has now been

reduced in response to the comment. The Zoning Board members stated that they were prepared to act upon the special use permit application. Attorney Gilchrist stated that the first action is a determination of environmental significance under the State Environmental Quality Review Act. Attorney Gilchrist stated that an uncoordinated review under SEQRA is being undertaken by the Brunswick Planning Board and the Zoning Board of Appeals, and that the Zoning Board of Appeals must make its determination of environmental significance of the action. Attorney Gilchrist reviewed the standards for making the determination of environmental significance under SEQRA. Chairman Steinbach stated that he felt there were no significant adverse environmental impacts from the proposed special use permit and operation of the 6-pump fuel island based upon a review of the application documents and environmental assessment form, and felt that a negative declaration should be adopted. Member Sclafani agreed, stating that the application documents were extensive, including the environmental assessment form and additional traffic impact analysis report, and that the Zoning Board should be able to rely on the traffic impact assessment report in connection with its determination of environmental significance. Chairman Steinbach then made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Shover. The motion was unanimously adopted, and a SEQRA negative declaration adopted. Thereupon, Attorney Gilchrist stated that the Zoning Board must consider the special permit standards, both the general standards under Section 7(C) of the Brunswick Zoning Ordinance, as well as the specific standards for “filling station” under Section 7(D) of the Brunswick Zoning Ordinance. In reviewing the special standards under Section 7(D), the Zoning Board determined that the standards were met, that the width of the lot meets the minimum lot width of 85 feet for a corner lot; that the pump island, including 6 pumps, is located over 25 feet from the highway right-of-way; that the proposed Cumberland Farms convenience store building is located in excess of 50 feet from the highway right-of-way; that the proposed location of the pump island does not create any sight line or visibility concerns; that

adequate landscaping is included; and that no automobile repair work is proposed. Regarding the general standards under Section 7(C), the Zoning Board members determined that the proposed action is appropriately located with respect to transportation facilities, water supplies, fire and police protection, waste disposal and similar facilities, expressly relying on the expert report prepared by Creighton Manning with respect to traffic impact assessment; that adequate off-street parking is provided; that the action will not unduly impair neighborhood character, since the action is located along Hoosick Road which is a general commercial corridor, and that adequate landscaping has been provided to the rear of the site to buffer the commercial use from residential uses; and that the action will not cause undue traffic congestion or create a traffic hazard, with Chairman Steinbach noting that while a few accidents were noted during the public hearing, these accidents were investigated and determined to be due to driver error and not to volume or turning lane configuration, that this action will not significantly affect the volume of traffic on Hoosick Road that exists presently, and Member Clemente commenting that the Planning Board engineer had reviewed the traffic impact assessment report and agreed with its conclusions, finding that traffic was not a significant issue on the application. Based on these findings and deliberations, Chairman Steinbach made a motion to grant the special use permit for the operation of the 6-pump fuel island, conditioned on site plan approval by the Planning Board for the overall project. That motion was seconded by Member Shover. The motion was unanimously approved, and the special use permit granted subject to site plan review action by the Brunswick Planning Board for the proposed Cumberland Farms store.

The second item of business on the agenda was the application by Nigro Companies for amendment to the Brunswick Plaza Planned Development District. This matter is before the Zoning Board of Appeals on referral from the Brunswick Town Board for recommendation. Gregg Ursprung, P.E. of Bergmann Associates, and Steve Powers of Nigro Companies, were present for the applicant. Mr. Ursprung stated that the Brunswick Planning Board had completed its recommendation, and had

issued a positive recommendation to an alternative design for the project of combining the existing commercial out-parcels into the Brunswick Plaza PDD as opposed to dividing additional acreage from the Brunswick Plaza PDD to add to separate commercial out-parcels. Mr. Ursprung and Mr. Powers stated that the applicant was in agreement with this approach, and is proposing to add the out-parcels to the Brunswick Plaza PDD area. The Zoning Board of Appeals members reviewed the written recommendation of the Brunswick Planning Board on this action, and unanimously concurred in its findings and determination. Chairman Steinbach then made a motion to adopt and join in the findings, determinations, and recommendation of the Brunswick Planning Board in this matter, which motion was seconded by Member Shover. The motion was unanimously approved. The Zoning Board directed Attorney Gilchrist to forward the Zoning Board recommendation on this action to the Brunswick Town Board.

The next item of business on the agenda was the application by Capital District Properties seeking an amendment to the Hudson Hills Planned Development District. This matter is before the Zoning Board of Appeals on referral from the Brunswick Town Board for recommendation. William Hoblock of Capital District Properties was present for the applicant, and reviewed the proposed amendment to the PDD, reviewing the application materials submitted to the Brunswick Town Board. Mr. Hoblock stated that the amendment seeks only the elimination of the current public benefit portion of the project, which previously included the construction of two youth baseball fields on a separate 25-acre parcel, and providing access to those recreation fields from Betts Road over a separate 39-acre parcel. Mr. Hoblock explained that the applicant is seeking to have this public benefit removed, and replaced with a public benefit of a payment to the Town of Brunswick based on \$1,200 per unit, for a total public benefit payment of \$300,000 to the Town of Brunswick for use as the Town deems appropriate for recreational or other purposes. Mr. Hoblock stated that there was a change in circumstances from 2007 when the original PDD approval was granted, and that the Town

was in need of additional recreation fields in 2007, but that in the intervening years, an additional youth baseball field had been constructed and that existing recreation fields in the Town of Brunswick had been maintained and continued in operation, resulting in the current situation where additional youth baseball fields are not required in the Town of Brunswick, and that in the alternative the applicant is proposing to make a monetary contribution so that the Town can utilize such funds as it deems fit. Mr. Hoblock stated that there would be no other change to the project, which had been thoroughly reviewed under the State Environmental Quality Review Act, and that this proposed amendment would actually reduce potential impacts by eliminating construction and operation of the youth baseball fields. Attorney Gilchrist noted that the Brunswick Planning Board is continuing to complete its written recommendation on this matter, and that the Brunswick Planning Board would likely complete its written recommendation prior to the Zoning Board's February meeting. Chairman Steinbach concluded that the Zoning Board should have the benefit of reviewing the Planning Board's written recommendation prior to making its final recommendation, and stated this matter should be held over until the Zoning Board's February meeting. Chairman Steinbach did state he had a few questions, including the applicant's intention for use of the 25-acre parcel on which the youth baseball fields were originally proposed for construction. Mr. Hoblock stated that the applicant has no current plans at all for use of the 25-acre parcel, and that it is currently a landlocked parcel in that Capital District Properties did not acquire title to the intervening 39-acre parcel through which access from the 25-acre parcel to Betts Road was proposed. Member Clemente stated she had reviewed the underlying application documents, and that 250 luxury apartments were proposed in 21 buildings, and asked whether this was the current proposal by Capital District Properties. Mr. Hoblock stated that the proposal for apartment construction remains unchanged. Member Clemente asked about other Capital District Property projects, and Mr. Hoblock stated that projects had been constructed in Halfmoon, Wilton, Cohoes, and Saratoga. Member Clemente asked whether the public benefit

provided in connection with those projects were financial, or whether the public benefit was construction of facilities. Mr. Hoblock stated that the other towns in which he works generally require a monetary contribution for the public benefit, and that calculating a monetary contribution is usually performed on a per unit basis. Member Clemente inquired whether the proposed amount of \$300,000 was comparable to monetary contributions in these other municipalities, or whether it was based on youth baseball field construction estimates. Mr. Hoblock stated that it was based on both factors, and that the applicant was preparing estimates for construction costs for two youth baseball fields based on 2017 values, and that information will be provided to the Town. Member Clemente inquired about the timing of the payment to be made to the Town, and whether the payment was made when a certificate of occupancy was issued for each unit. Mr. Hoblock stated that this will be a Town Board determination, and that the payment may be made prior to CO issuance, but that this will be a final Town Board determination. This matter is placed on the February 27 agenda for further discussion.

The next item of business on the agenda was the special use permit application submitted by Stewart's Shops in connection with a proposed 3,900 square foot Stewart's convenience store with a 4-pump fuel island at 1001 Hoosick Road. Chad Fowler of Stewart's Shops was present, together with Alana Moran of Creighton Manning. Mr. Fowler reviewed the proposal to construct the new Stewart's convenience store, which is proposed to be 3,900 square feet with a 4-pump fuel island, and that one of the pumps will have diesel fuel dispenser, and that the site will also have separate kerosene fuel sale. Mr. Fowler stated that a traffic study had been completed, and that Ms. Moran of Creighton Manning would review the traffic study. Member Shover asked about renovating the current location at the intersection of Route 142 and Route 7. Mr. Fowler stated that Stewart's wanted to remain at the current location and expand, but was unable to acquire additional property to make that expansion feasible. Alana Moran of Creighton Manning reviewed the traffic impact assessment report for the project, including computation of trip generation, sight distance, and the proposal for

construction of a two-way center lane extension on Route 7 in order to accommodate a two-way ingress/egress driveway to the Stewart's Shop from Route 7. Ms. Moran reviewed the computation for existing pass-by traffic and new trip generation for both AM and PM peak hours. Ms. Moran reviewed the issue of traffic queuing in a westbound direction at the traffic signal at the Route 7/Route 142/Sweetmilk Creek Road intersection. Ms. Moran noted that the traffic signal at that location is currently being replaced by NYSDOT, and that the trigger for the light is not currently working properly, resulting in additional traffic queues currently at that location, but that the queuing should be corrected once the new traffic light is installed and properly programmed. Ms. Moran stated that the traffic report plus proposed extension of the two-way center lane had been submitted to NYSDOT in mid-November, but that comments had not yet been received from NYSDOT. Chairman Steinbach had questions concerning the AM and PM peak calculations, and also reviewed the proposed road widening and extension of a two-way turn lane on Route 7 for the project. Member Shover asked whether the proposed construction would be within the existing NYSDOT right-of-way. Ms. Moran stated that the proposal was to do all construction work within the existing NYSDOT right-of-way, but certainly extending the paved area of Route 7 within the existing right-of-way. Member Clemente asked whether the road widening would occur both east and west of the proposed Stewart's site, which was confirmed by Ms. Moran. Chairman Steinbach asked about the use of Sweetmilk Creek Road as an access point. Ms. Moran stated that the primary access to the Stewart's store would be from Route 7, and that the pump orientation designed for the project would promote access from Route 7, but would also anticipate drive-through traffic which would use Sweetmilk Creek Road as an access point as well. Ms. Moran stated that it is anticipated that 70–75% of the customers will use the Route 7 entrance, and 25–30% would use the Sweetmilk Creek entrance. Member Clemente stated the Rensselaer County Planning Department had raised several comments, including questioning whether the traffic counts were taken when traffic was not heavy. Ms. Moran stated that the traffic counts

were taken on Tuesday during June of 2016, which is an appropriate time for traffic counts for traffic impact assessment purposes. Ms. Moran stated that Route 7 is a major commuter route, which guidelines indicate should not fluctuate as a result of different seasons, and that in fact June traffic counts are generally slightly above average. Member Clemente noted that weekend travel on Route 7, even including Friday evening and Monday morning, does fluctuate seasonally, as Route 7 is a thoroughfare to Vermont and New England. Member Shover agreed. Member Shover stated he wanted to see a full schematic of the proposed work within the NYSDOT right-of-way. Member Clemente stated that she wanted to see the comments from NYSDOT on the traffic impact report. The Zoning Board members generally concluded that the public hearing on the special use permit should be opened at the February 27 meeting, but that the public hearing will remain open until comments are received from NYSDOT on the proposed road improvements. This matter is placed on the February 27 agenda for public hearing on the special use permit application. The public hearing will commence at 6:00pm.

One item of new business was discussed.

A special use permit application has been submitted by Peter and Darcy Jones for property located at 305 Sweetmilk Creek Road. The applicants seek a special use permit for the addition of an apartment at this residential premises, for use by their daughter. Peter Jones was present, and explained that the house originally had an adjacent living unit in it, but that the adjacent living unit had not been used for several years, that they are now currently renovating that space for their daughter, and that the installation of a separate kitchen unit in that separate living unit gives rise to the need for the special use permit. Mr. Jones confirmed that no extensions to the building footprint are proposed, and that the work will be all interior renovations to the existing structure. The Zoning Board members reviewed the application with Mr. Jones, deemed the application to be complete, and scheduled this matter for public hearing at the February 27 meeting to commence at 6:15pm.

The Zoning Board members received a comment from Wayne Howe, who was present at the meeting, stating that he had concerns regarding the location of a waterline easement on the proposed Stewart's Shops site, and also concerns regarding traffic. The Zoning Board members stated that these comments should be submitted at the public hearing.

The index for the January 23, 2017 meeting is as follows:

1. Cumberland Farms - Special use permit - Granted with condition;
2. Cellco Partnership d/b/a Verizon Wireless - Special use permit - Adjourned to February 27, 2017 meeting;
3. Nigro Companies - Recommendation to Town Board on Brunswick Plaza PDD Amendment - Completed;
4. Capital District Properties - Recommendation to Town Board on Hudson Hills PDD Amendment - 2/27/2017;
5. Stewart's Shops - Special use permit - 2/27/2017 (public hearing to commence at 6:00pm);
6. Jones - Special use permit - 2/27/2017 (public hearing to commence at 6:15pm).

The proposed agenda for the February 27, 2017 meeting currently is as follows:

1. Stewart's Shops - Special use permit (public hearing to commence at 6:00pm);
2. Jones - Special use permit (public hearing to commence at 6:15pm);
3. Capital District Properties - Recommendation to Town Board on Hudson Hills PDD Amendment;
4. Cellco Partnership d/b/a Verizon Wireless - Special use permit.