

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 SEPTEMBER 19, 2016

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

ABSENT was WILLIAM SHOVER.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the August 15, 2016 meeting. Two corrections were noted. On page 4, at line 14, “publish” is corrected to “public”. On page 8, at line 1, “property” is corrected to “properties”. Subject to the stated corrections, Member Clemente made a motion to approve the draft minutes of the August 15, 2016 meeting, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the draft minutes of the August 15, 2016 meeting were unanimously approved with the stated corrections.

The first item of business on the agenda was the area variance application submitted by Christine and Michael Colucci for property located at 4 Plum Road. The applicants seek a rear yard setback variance with respect to the construction of a deck on the property. Christine and Michael Colucci were present. Chairman Steinbach inquired whether there were any changes or additions to the application. Mrs. Colucci stated there were no changes or additions to the application. Thereupon, the Zoning Board opened a public hearing on the application. The notice of public hearing was read into the record, with that notice 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. Member Sclafani did note that a letter had been received into the record from Anthony and Sarah Conyers, 16 Valley View Drive, which is located immediately to the rear of the Colucci parcel, stating that the Conyers had no opposition to the requested variance. Hearing no further comment from the public on the application, Member Clemente made a motion to close the public hearing on the Colucci area variance application, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed. The Zoning Board then proceeded to deliberate on the area variance application. Attorney Gilchrist noted that the application seeks an area variance in connection with a single-family residence, and constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. The Zoning Board then proceeded to review and deliberate on the elements to be considered in connection with the area variance request. The Zoning Board determined that the requested variance will not produce a change in the character of the neighborhood nor create a detriment to nearby properties, finding that decks constructed to the rear of homes are consistent with the neighborhood; that given the size of the lot and the location of the house on the lot, the applicant did not have a feasible alternative to construct the desired size deck to the rear of the home; that the requested variance was not substantial, as a 50-foot rear yard setback is required and a 42-foot rear yard setback is proposed; that the requested variance would not result in any adverse physical or environmental impact, noting that the deck materials proposed are composite materials that will not require any staining or maintenance in the future and that in terms of the visual assessment, the neighbor located immediately to the rear has no opposition to the requested variance; and that while the need for the requested variance can be deemed to be self-created, this element should not preclude the grant of the variance in this case. Chairman

Steinbach noted that in consideration of these elements, and in balancing the benefit to the applicant as opposed to any detriment to the neighborhood, he would be in favor of granting the variance as he feels the addition of the deck would have a positive effect on the neighborhood, enhance the quality of life for the homeowners, and that there are no impacts that he can see from construction of the deck in the requested location. Member Sclafani agreed, and further made a motion to grant the requested area variance allowing the construction of deck at 4 Plum Road with a 42-foot rear yard setback. The motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance granted. Mr. and Mrs. Colucci were directed to coordinate with the Town Building Department on necessary permits for the deck construction.

The next item of business on the agenda was an area variance application submitted by Thomas Fitzgerald for property located at 8 Brook Hill Drive. The applicant seeks a side yard setback variance with respect to an existing shed on the property. Mr. Fitzgerald was present. Chairman Steinbach inquired whether there were any changes or additions to the application. Mr. Fitzgerald stated there were no changes or additions to the application. Thereupon, the Zoning Board opened the public hearing on the application. The notice of public hearing was read into the record, with the notice being 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. Kathy Romano, 15 Brook Hill Drive, stated she had no opposition and was in favor of the Zoning Board granting the requested variance. Jim Gardner, 8 Brook Hill Drive, also stated he had no opposition to granting the area variance and was in favor of the application. Henry Reiser, of Reiser Builders Inc., stated he was the builder of the house on Mr. Fitzgerald's lot, and that he also owned lots on each side of Mr. Fitzgerald's property, and that he was in favor of the Zoning Board granting the requested variance. Chairman

Steinbach asked whether any members of the Zoning Board had questions. Member Shover had a question concerning the lot layout shown on a map and the narrative submitted in connection with the application documents. Upon explanation by Mr. Fitzgerald, Member Shover indicated he clearly understood the variance request. Hearing no further public comment, Member Clemente made a motion to close the public hearing on the Fitzgerald area variance application, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed. Chairman Steinbach then summarized the matter, stating that Mr. Fitzgerald had initially applied for a building permit for the shed installation based on a survey map that he had in his possession at that time, and that the appropriate building permit had been issued showing appropriate setback from the side yard lot line. However, Mr. Fitzgerald determined subsequently that the prior survey map on which he relied was not correct. He had an updated survey map prepared, which showed the correct lot line, resulting in the need for a side yard setback for the shed which had already been constructed and completed pursuant to the previous building permit. The Zoning Board understood the application, including the need for the variance, and proceeded to deliberate on the application. Attorney Gilchrist stated that the application seeks an area variance in connection with a single-family residence, and constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. Regarding the elements of the requested area variance, the Zoning Board determined that the requested variance will not impair the character of the neighborhood nor create a detriment to nearby properties, as the shed has been installed for some time and has not resulted in any complaints or off-site impacts, that there will be no visual impact from the shed, that the shed fits nicely on the lot in relation to the house, and that the overall appearance of the shed and the lot in general is very good, and that the shed is consistent with the character of the Brook Hill neighborhood; that given the facts of this matter, a

feasible alternative is not available to the applicant other than moving and relocating the shed on the lot, which in this case does not seem warranted, particularly since the current location of this shed has neighbor support; that the extent of the requested variance could be deemed substantial simply based on the numbers, but that the facts of this matter, including the prior incorrect survey map on which the property owner and the Building Department relied in issuing a building permit for the construction of the shed, warrants that the requested variance in this case should not be deemed substantial; that there will be no adverse physical or environmental impacts from the requested variance; and that in this case, based upon the facts, the need for the variance is deemed not to be self-created, as all parties were previously relying on a survey map which proved to be incorrect. Chairman Steinbach noted that given the facts of this matter—that the property owner had appropriately applied for a building permit prior to constructing and installing the shed, the current need for the variance given an updated and corrected survey map, that the neighbors are supporting the application, that it is consistent with the neighborhood, and that the structure has been well-maintained—he would be in favor of granting the variance. Member Sclafani agreed, and offered a motion to grant the requested area variance, which motion was seconded by Member Clemente. The motion was unanimously approved, and the area variance granted.

The next item of business on the agenda was the area variance application submitted by Michael Vickers for property located off Krieger Lane (Tax Map No. 83.-2-4.4). The Zoning Board was continuing a public hearing on this application. Larry Broderick, representative of Mr. Vickers, was present, stating that Mr. Vickers is still out of town on business and had filed a written approval to have Mr. Broderick represent him at this meeting. Mr. Broderick confirmed that there were no changes in the application. The Zoning Board reiterated that Member Schmidt had requested a map or survey of the property showing the location of the 40-foot wide right-of-way

off Krieger Lane, the location of the existing driveway leading to the existing home, and the location of a proposed roadway leading to the Vickers property. Mr. Broderick confirmed that the existing driveway is located on the left side of the 40-foot right-of-way, but that a map or survey had not been prepared. Chairman Steinbach also noted that the Building Department had coordinated with the Fire Department to review the location of any proposed road, and that the Fire Department will be preparing a report that will be submitted to the Zoning Board, but that has not yet been received by the Zoning Board. The Fire Department was requested to review the property in terms of necessary emergency vehicle access, including road width, road specifications to support the weight of emergency vehicles, turning radius and turnaround, and any other issues which the Fire Department deemed relevant on the matter. Member Shover noted that he had visited the site, and had several questions regarding the proposal, including the location of any new proposed roadway in relation to where the proposed lots are located, and the relationship to the existing driveway of the existing home. Chairman Steinbach noted that several issues exist; that a map or survey needs to be submitted by the applicant showing the location of the 40-foot wide right-of-way, as well as coordination with the Fire Department to obtain the report concerning emergency vehicle access, and information concerning the specifications of any proposed road. Attorney Gilchrist stated that it is important for the Zoning Board to understand the proposed road leading to the proposed building lots, including construction specifications, drainage, width, as well as any enforceable private road maintenance agreement as this road is not proposed to be dedicated as a public road. Chairman Steinbach confirmed that all of this information is necessary on the record for the Zoning Board to consider the area variance application. This matter has been adjourned to the October 17 meeting, for the receipt of the requested additional information and continuation of the public hearing.

Three items of new business were discussed.

The first item of new business discussed was a sign variance application submitted by Sign Studio, Inc. on behalf of Rensselaer Honda for property located at 770 Hoosick Road. Sarah Manley of Sign Studio, Inc. was present for the applicant. Ms. Manley stated that the requested sign variance is in connection with the renovation of the Rensselaer Honda facility at 770 Hoosick Road, that two sign permits had already been granted for installation of one exterior wall sign and one free-standing sign, and that the sign variance application is to add five additional wall signs to the exterior of the building. Ms. Manley stated that the total square footage of all signs is within Code limits, but that the Code limits the number of signs to a total of two signs, and that Rensselaer Honda is seeking to have a total of seven signs. Ms. Guastella confirmed that the total square footage is compliant with Town Code requirements, but that a variance is needed for the total number of signs. Member Clemente confirmed the total number of signs and the content of those signs on the application documents. The Zoning Board members generally reviewed the application materials and found them to be complete, and the application fees have been paid. The Zoning Board determined to schedule and hold a public hearing on this application. The public hearing will be held at the October 17 meeting to commence at 6:00pm.

The second item of new business discussed was a referral from the Brunswick Town Board for recommendation on a proposed amendment to the Brunswick Square Planned Development District, with respect to a proposed Bank of America ATM kiosk in the parking lot of the Brunswick Square Plaza. Paul Mutch, P.E., of Stonefield Engineering, was present for the applicant. Mr. Mutch went through the application proposal, in which Bank of America seeks an amendment to the existing PDD approval to allow the installation of a free-standing, stand-alone ATM kiosk in the parking lot. Mr. Mutch stated that a bank as a primary use is allowed in the

Brunswick Square Planned Development District, and that ATMs are a permitted accessory use, but that the PDD legislation did not allow a stand-alone ATM kiosk as a primary permitted use in the Brunswick Square Plaza. Mr. Mutch went through the specifics of the proposed ATM kiosk, which is proposed to be 11 feet in height, 8.5 feet wide, and 2 feet deep. Mr. Mutch reviewed the signage and color for the proposed kiosk. Mr. Mutch reviewed the lighting for the canopy as well as the lighting around the kiosk that is required in connection with New York State requirements. Mr. Mutch reviewed the location of the kiosk in the parking lot, which is located approximately 12 feet from the front property line along the Hoosick Road corridor. Mr. Mutch stated that nine parking spaces would be removed as a result of the kiosk installation, and a dedicated drive-thru lane would be provided with appropriate curbing. Mr. Mutch stated that the ATM location is important for Bank of America, since the kiosk must be visible from the Hoosick Road corridor for Bank of America customers, particularly in light of the fact that additional signage on the mall pole sign will not be added, and that the customers need to see the Bank of America signage directly on the kiosk. Mr. Mutch also explained that the location is designed to be in the lowest turn-over spaces in the parking lot, to eliminate any conflict with existing parking and traffic flow as well as pedestrian traffic. Mr. Mutch then reviewed the length of the drive-thru lane, which allows for a three-car queue, which is sufficient for the anticipated usage of the ATM kiosk. Mr. Mutch stated that limited greenspace would be removed in connection with the kiosk construction, but the greenspace and trees directly adjacent to the Hoosick Road corridor would remain. Mr. Mutch reviewed the specifics of the additional pole lighting which he indicates is required pursuant to New York State regulation. Mr. Mutch concluded that the kiosk fits into the character of the commercial area, is a benefit to the site, and will not create a detriment to the area or customers in the Brunswick Square Plaza. Chairman Steinbach discussed the issue of the number of parking

spaces in the Brunswick Square Plaza parking lot, with Mr. Mutch stating that in his opinion, the parking spaces provided were significantly greater than the site would otherwise call for, so that the elimination of nine spaces will be insignificant. Chairman Steinbach inquired about the hours of operation for the kiosk. Mr. Mutch stated that the kiosk would be 24/7, so that the lighting around the kiosk would be on all night. Member Shover asked about the lighting impact on the Hoosick Road corridor. Mr. Mutch stated that the existing foot-candles of an existing pole light for the parking lot was 3 foot-candles at the property line, and that the foot-candles would raise to 4.5 foot-candles with the installation of the additional kiosk lighting, but that the light remains less than 1 foot-candle in the Hoosick Road corridor. Member Sclafani asked about the impact of the kiosk location on an existing bus stop in the plaza parking lot. Member Sclafani noted that many people use the bus stop location to then cross the street to go to Burger King or Dunkin Donuts, and that she could easily see people using the ATM kiosk as a walk-up facility as well. Mr. Mutch stated that signage could be installed to indicate that walk-up usage is not allowed. Member Schmidt did have a concern that with the number of people that use the bus stop, even with signage the kiosk could become a pedestrian safety issue. Member Schmidt also noted that the County referral did provide a comment that there could be an existing CDTA Park & Ride location in proximity to the proposed kiosk. Mr. Mutch stated that he would look into any existing agreement for Park & Ride with CDTA at that location. The Zoning Board determined to continue discussion and deliberation on this matter at the October 17 meeting for purposes of completing their recommendation to the Town Board. This matter is placed on the October 17 agenda.

The third item of new business discussed was the special use permit application submitted by Cellco Partnership d/b/a Verizon Wireless for a major telecommunications facility located proximate to the intersection of Creek Road and Menemsha Lane. David Brennan, Esq., of Young

Sommer, was present representing the applicant, together with an RF Engineer and Site Acquisition Specialist for the applicant. Mr. Brennan stated that he was present to introduce the proposed project to the Zoning Board, knowing that the Zoning Board would need adequate time to review the application materials and also consider retaining an engineering firm as review engineer on the application. Mr. Brennan stated that the specific location for the proposed tower is 275C Menemsha Lane, to be located on an 86-acre parcel owned by Zucky. The proposed access to the cell tower location is directly off Creek Road, via a right-of-way over a second parcel owned by Zucky connecting to the location of the proposed cell tower. A 50-foot wide utility and access easement is proposed, in which a 16-foot gravel driveway would be constructed. Mr. Brennan stated that a 100-foot by 100-foot lease area is proposed for the cell tower, in which a 75-foot by 75-foot fence enclosure would be located to house the base equipment and cell tower. The tower is proposed to be 150 feet high, with a 4-foot lightning rod. Mr. Brennan explained the proposed location of the tower on the parcel, and how the required setback from existing residences impacted the final proposed tower location. Mr. Brennan explained that the parcel is located adjacent to a residential neighborhood located off Menemsha Lane at Eagle Ridge, and that the Town telecommunications law requires a 750-foot setback from existing residences. The elevation of the property in proximity to the residences is higher than it is on the balance of the Zucky parcel, which generally slopes down and away from the residential neighborhood. Mr. Brennan stated that if the proposed cell tower was located closer to the residences in Eagle Ridge, the tower height could be reduced since the elevation is greater, but a variance would be required to allow construction of the tower closer than 750 feet from existing residences. Mr. Brennan then explained that the tower height needed to be increased if the 750-foot setback from residences is maintained, which is the current proposal of a 150-foot tower. Mr. Brennan explained further that

the cell tower could be located to increase the distance from the residences, but in turn the elevation decrease would necessitate an even taller tower, and that there were certain service impairments that would result if the tower was located further away from the residences than 750 feet. Mr. Brennan concluded that when considering the setback requirements and ground elevations, the current location of the tower is proposed to be 750 feet from existing residences, with a tower height of 150 feet. Mr. Brennan then explained that this proposed tower location is in the R-25 Zoning District, as opposed to the A-40 Agricultural District. Mr. Brennan stated that in this case, the Eagle Ridge residential community is located in the A-40 Zoning District, but the balance of the Zucky property, on which agricultural use is currently in place, is zoned R-25. Because of the R-25 Zoning designation, a use variance will be required in connection with siting the tower at the proposed location. Mr. Brennan then generally reviewed technical information contained in the application documents. The Zoning Board members discussed the option of retaining an outside engineering consultant to assist in the review of the application. The Zoning Board determined that technical support in review of the application is needed, that the Town does not employ any engineer that could provide the required technical review of the application, and determined to retain an outside engineering firm for purposes of assisting in the review of this special use permit application. Member Shover made a motion to retain the Laberge Group as designated engineering review consultants on this application, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the Laberge Group retained as designated review engineer for this application. It was determined that the application materials will be forwarded to the Laberge Group for purposes of initial review and preparation of an estimate for review fees, with the applicant then establishing a required escrow at the Town for engineering review fees. This

matter is tentatively placed on the October 17 agenda, subject to the extent of the review that can be completed by the Laberge Group prior to that date.

The index for the September 19, 2016 meeting is as follows:

1. Colucci - Area variance - Granted;
2. Fitzgerald - Area variance - Granted;
3. Vickers - Area variance - October 17, 2016 (public hearing to continue);
4. Sign Studio, Inc/Rensselaer Honda - Sign variance - October 17, 2016 (public hearing to commence at 6:00pm);
5. Bank of America - Brunswick Square Planned Development District Amendment Recommendation - October 17, 2016;
6. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance - October 17, 2016

The proposed agenda for the October 17, 2016 meeting currently is as follows:

1. Sign Studio, Inc/Rensselaer Honda - Sign variance (public hearing to commence at 6:00pm);
2. Vickers - Area variance (public hearing to continue);
3. Bank of America - Brunswick Square Planned Development District Amendment Recommendation;
4. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance.