

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 NOVEMBER 19, 2018

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

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board reviewed the draft minutes of the October 15, 2018 meeting. Upon motion of Member Clemente, seconded by Member Sclafani, the minutes of the October 15, 2018 meeting were unanimously approved without amendment.

The first item of business on the agenda was an area variance application submitted by Harold Hier for property located at 23 Otsego Avenue. The applicant seeks both a front yard and side yard setback variance for the installation of a 12-foot by 18-foot shed to replace an existing shed located on the property. Harold Hier was present. Chairman Steinbach inquired whether there were any changes to the application since the October 15 meeting. Mr. Hier stated that there had been no changes to the application, and he continues to request two area variances for the front yard and side yard setbacks for the installation of a new shed at 23 Otsego Avenue. The Zoning Board opened a public hearing on the application. The notice of public hearing was read into the record, noting that the public hearing notice was published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairman Steinbach opened the floor for the receipt of public comment. No members of the public wished to provide any comment on the application. Chairman Steinbach

inquired whether any of the Zoning Board members had any questions or comments. Member Sclafani asked whether the new shed would be smaller than the existing shed located on the property. Mr. Hier stated that it would be smaller than the existing shed. Member Sclafani wanted to confirm that the existing shed is in poor condition. Mr. Hier stated that it is in poor condition, and that is why he is looking to replace it. Member Sclafani asked whether it was cost prohibitive to repair the existing shed. Mr. Hier stated that it would be cost prohibitive due to the extent of the deterioration, and that he was looking to replace the old shed with a new shed. Chairman Steinbach wanted to confirm that the new shed would be the same type as shown in pictures submitted with the application. Mr. Hier confirmed that the pictures accurately reflect the type of shed he was looking to install, but that it would be a different color than the pictures submitted. Chairman Steinbach asked about the foundation on which the shed would be placed. Mr. Hier stated that he was going to install a crushed stone pad on which the shed would be placed. Chairman Steinbach asked about an existing wooden fence located adjacent to the closest neighbor to the proposed shed location, and whether the shed would block the fence. Mr. Hier stated that there will be space provided between the shed location and the existing wooden fence to allow his neighbor to get access to the fence and allow him to get access to the side of the shed. Chairman Steinbach did note for the record that there was no objection to the requested variance from this closest adjacent neighbor. Hearing no further questions or comments, and hearing no additional public comment, Member Clemente made a motion to close the public hearing on the Hier area variance application, which motion was seconded by Member Sclafani. The motion was unanimously approved, and the public hearing closed. The Zoning Board members were prepared to move forward to deliberate on the application. Attorney Gilchrist stated that the application seeks an individual setback variance in connection with a single-family residence use, and

constitutes a type 2 action under SEQRA. Attorney Gilchrist then reviewed the factors for the Zoning Board to consider in determining the application. The Zoning Board determined that it would consider both the front yard and side yard setback requests together while reviewing these factors. As to whether the requested variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Clemente stated that the installation of a shed in the proposed location would actually be an improvement to the neighborhood as the deteriorated shed will be removed, and that the location requested by the applicant for this new shed is consistent with shed locations in the surrounding neighborhood. All members concurred with these comments. As to whether a feasible alternative was available to the applicant, Member Scalfani stated that the proposed location of the shed was an improvement over the prior location as it is located at the end of the existing driveway and increases the beneficial use and aesthetics of the shed and the property. All Zoning Board members concurred with those comments. As to whether the requested area variances are substantial, Chairman Steinbach stated that the front yard setback of 50 feet, where the area and bulk table in the Brunswick Zoning Law requires a 60-foot front yard setback, is not substantial. Chairman Steinbach did note that the side yard setback proposal is 4 feet from the side yard lot line, where the Brunswick Zoning Law area and bulk table requires a 10-foot side yard setback. Chairman Steinbach did note that this could be considered substantial, but that the location of the shed is appropriate at the end of the driveway and the adjacent wooden fence on the neighbor's lot line mitigates the impact of the shed, and noted for the record that the adjacent property owner did not object to the proposed shed location. Member Clemente noted that the lot is located in the R-9 Zoning District, that it is a small lot with little area for an accessory building, and that this proposed location is similar to other homes and sheds in the neighborhood. As to whether the requested

variances would have an adverse effect on the physical or environmental conditions in the neighborhood, Member Sclafani noted that the new shed would actually improve the appearance and aesthetics of the property, and saw no adverse physical or environmental impacts. Member Clemente noted that removal of the deteriorated shed in the backyard would actually increase greenspace on the lot. As to whether the difficulty is self-created, Chairman Steinbach noted that the old, deteriorated shed did need to be replaced; that the lot is tight and the proposed location is beneficial for the shed use at the end of the driveway; and that these factors dictated that the difficulty is not self-created. However, even if the difficulty is deemed to be self-created, this factor is not determinative in this case. Based on these factors, and in balancing the benefit to the applicant in granting the requested variances as opposed to any detriment to the neighborhood in particular or Town in general, the Zoning Board proceeded to make a determination on the variance application. Member Schmidt inquired whether it would be an appropriate condition to require the removal of the old, deteriorated shed. Attorney Gilchrist stated that this would be an appropriate condition, as it is based on a number of factors that the Zoning Board considered in determining the application, most particularly on visual and aesthetic issues. Chairman Steinbach then made a motion to grant the front yard and side yard setback variances subject to the condition that the existing shed located on the property be removed in a timely fashion in coordination with the Brunswick Building Department. The motion was seconded by Member Schmidt. The motion was unanimously approved, and the two requested area variances granted subject to the stated condition. Chairman Steinbach directed Mr. Hier to coordinate with the Brunswick Building Department on the removal of the existing shed and installation of the new shed.

The next item of business on the agenda was two area variance requests by Thomas Martell for property located at 718 Tamarac Road. The applicant seeks variances for the front yard setback

and the proximity of an accessory structure to the front yard lot line with regard to the installation of a carport. Mr. and Mrs. Martell were present. Chairman Steinbach inquired whether there were any changes to the application since the October 15 meeting. Mr. Martell stated there were no changes to the application. The Zoning Board opened the public hearing on the application. The notice of public hearing was read into the record, noting that the public hearing notice was published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of properties located within 300 feet of the project site. The Zoning Board opened the floor for receipt of public comment. Kenneth Herrington, 63 Herrington Lane, and representing Herrington Farms, stated that he had no objection to the requested variances; that the carport would be put in the same location where cars have been parked for years; and that the Brunswick Zoning Law was too restrictive in terms of this proposed carport. John Curran, 726 Tamarac Road, stated that he owns property on three sides of the Martell lot, that he has no objection to the application, and in fact supports the application and granting of the requested variances. Hearing no further public comment, Chairman Steinbach 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. Chairman Steinbach wanted to confirm the location of the car port on the maps submitted with the application, and asked whether the existing blacktop would be extended to the proposed location of the car port. Mr. Martell stated that the blacktop would be extended to the car port, and identified the location of the car port on the application materials. Member Sclafani had a question concerning the style of the car port. Both Mr. and Mrs. Martell stated that the style will match their home. Member Clemente wanted to confirm that the family had owned this property since 1955. Mr. Martell confirmed that the house had been owned by him and his wife and his wife's parents since 1955. The Zoning Board members had no

further questions, and proceeded to deliberate on the application. Attorney Gilchrist stated that the requested variances seek individual setback variances in connection with a proposed residential use, and constitutes a Type 2 action under SEQRA. The Zoning Board confirmed that the requested variances include a front yard setback, with a setback proposed of 55 feet where the Brunswick Zoning Law requires 75-foot front yard setback, and also a variance from the Brunswick Zoning Law provision that prohibits an accessory structure being located closer to the front lot line than the principal building on the lot. Both of these requested variances are in the nature of area variances. The Zoning Board members then proceeded to deliberate on the factors in connection with the requested variances. The Zoning Board did determine to address both requested variances when deliberating on the factors. As to whether the requested variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairman Steinbach stated that he felt there would be no detriment to the surrounding neighborhood, that such accessory structures were not unusual in that part of the Town of Brunswick, and would have no impact on the character of the neighborhood. Member Clemente also noted for the record that the nearby property owners came out in support of the application, and had no objection to the requested variances. As to whether a feasible alternative existed, Member Sclafani noted that the proposed location for the car port is the natural location for such a car port since the driveway is already in that location and cars have already been parked in that location for several years. Member Shover inquired why the car port is not located further back on the lot away from the front lot line. Mrs. Martell stated that they were looking to maintain as much of their backyard and garden as possible, not wanting to disturb any existing vegetation, and that the location of the car port is where they have always parked cars. As to whether the requested variances are substantial, Member Sclafani did not consider the 20-foot front yard setback variance

to be substantial, particularly given the location of the property along Tamarac Road, also stating that the existing driveway promoted the location of the car port as proposed, and that this was also a factor in determining that the requested variance was not substantial. The Zoning Board members concurred, stating that this was not a substantial variance for that part of the Town of Brunswick. As to whether the requested variances would result in an adverse effect on physical or environmental conditions in the neighborhood, Member Clemente stated that the proposed location would not disturb existing greenspace and landscaping, promoting maintenance of existing vegetation, greenspace, and visual and aesthetic conditions in the neighborhood. Chairman Steinbach noted that the only impact could be a visual impact, but that in his opinion there was no negative visual impact in this case. As to whether the difficulty is self-created, Member Scalfani felt that the difficulty is self-created as there could be another location for this car port on the property, but that this factor is not determinative in this case and should not be given much weight, particularly since the proposed location of the car port is the same as where cars have historically parked, and that this proposed car port location would maintain existing greenspace and gardens. Attorney Gilchrist noted for the record that this application had been forwarded to the Rensselaer County Department of Economic Development and Planning given its location adjacent to a County road, and that the County Planning Department has determined that the proposal does not have a major impact on County plans and that local consideration shall prevail. Thereupon, Member Schmidt made a motion to approve the two requested variances, which motion was seconded by Member Scalfani. The motion was unanimously approved, and the two requested variances for the Martell property were granted.

Three items of new business were discussed.

The first item of new business discussed was an area variance application submitted by George Macy for property located at 15 Russell Court. Mr. Macy was present. Mr. Macy explained that he and his wife own both 11 Russell Court and 15 Russell Court, and that it is their intent to move into the property located at 15 Russell Court, and in connection with that move are proposing to construct an addition to the existing home at 15 Russell Court. In connection with the proposed two-story addition to the existing home at 15 Russell Court, one side yard setback variance is being requested. It is noted that the existing home on the lot is an existing nonconforming use. The proposed addition will be located 13.1 feet from the side yard lot line, where the Brunswick Zoning Law area and bulk table requires a side yard setback of 15 feet. This will result in a 1.9-foot area variance from the side yard setback requirements. The Zoning Board members discussed the layout of the lots located at 11 Russell Court and 15 Russell Court, and also 17 Russell Court which is the lot closest to the proposed side yard setback variance. The Zoning Board members deemed the application materials to be complete, and set this matter for public hearing for the December 17 meeting to commence at 6:00pm. Member Clemente confirmed that the Zoning Board members would have access to the properties prior to the December 17 public hearing, and Mr. Macy confirmed that the Zoning Board members could access the properties. This matter is placed on the December 17 agenda for public hearing to commence at 6:00pm.

The second item of new business discussed was the area variance applications submitted by Clara and Mark Duncan for properties located both at 38 Duncan Lane and 32 Duncan Lane. Mark Danskin, Land Surveyor, was present for the applicants. Mr. Danskin explained that he had submitted a waiver of subdivision application to the Brunswick Planning Board for proposed lot line adjustments for these properties located on Duncan Lane, and in connection with the proposed

lot line adjustments, the Planning Board identified two area variances that would be required in connection with existing structures at these properties. Mr. Danskin then reviewed the proposed lot layout and property line adjustments, and discussed the proposed setback variances for both 38 Duncan Lane and 32 Duncan Lane. Regarding 38 Duncan Lane, Mr. Danskin explained there was an existing garage located 20 feet from the proposed rear lot line, where the Brunswick Zoning Law area and bulk table requires a 25-foot rear yard setback; and that a deck is located off of the garage that is 9 feet from the rear yard proposed lot line, whereas an accessory structure setback of 15 feet is required under the Brunswick Zoning Law. Mr. Danskin confirmed that no new construction is being proposed for 38 Duncan Lane, just a proposed lot line adjustment. Regarding 32 Duncan Lane, Mr. Danskin also explained that an existing deck will be located 5.1 feet from a proposed lot line adjustment, where the Brunswick Zoning Law area and bulk table requires a 15-foot side yard setback, resulting in a 9.9-foot area variance. Mr. Danskin reiterated that no new construction is being proposed, just a lot line adjustment. Mr. Danskin explained that the proposed lot line adjustments were to bring the size of the lot located at 38 Duncan Lane up to 25,000 square feet, which will be compliant with the Zoning District requirements. Mr. Shover had a question regarding location of the septic system at 32 Duncan Lane, and the location of the septic was discussed. It was also confirmed that public water services both 38 Duncan Lane and 32 Duncan Lane. The Zoning Board members deemed the variance applications to be complete, and scheduled public hearings for both the variances for 38 Duncan Lane and the variance for 32 Duncan Lane for its December 17 meeting. The public hearing for 38 Duncan Lane will commence at 6:15pm and the public hearing for 32 Duncan Lane will commence at 6:20pm.

The third item of new business discussed was a sign variance application submitted by Hospitality Syracuse, Inc. in connection with the proposed Taco Bell restaurant to be constructed

at 720 Hoosick Road (Price Chopper Plaza). Tim Freitag of Bohler Engineering was present for the applicant. The application identifies Nigro Companies as property owner. Mr. Freitag reviewed the proposed sign variances, and generally reviewed the proposed signage for the property, including three proposed wall signs, a directional sign, a clearance bar sign, a drive-thru menu board, and a monument sign in front of the building adjacent to Hoosick Road. Mr. Freitag did note that the applicant did request that Taco Bell signage be placed on the existing free-standing sign for the Price Chopper Plaza entrance at the signalized intersection on Hoosick Road, and that this request was denied by the landlord. The application seeks a variance for the total number of signs on the site, with a total of eight signs being proposed whereas two signs are allowed under the Brunswick sign law. The application also seeks approval of a free-standing monument sign, whereas no additional free-standing sign is allowed under the Brunswick Zoning Law given the existing free-standing monument sign located at the entrance to the Price Chopper Plaza at the signalized intersection on Hoosick Road. The final variance sought by the applicant is for total square footage of signage on the site, with 178 square feet of signage being proposed where the Brunswick Zoning Law allows 88 square feet, resulting in a variance of 90 square feet. Member Clemente had a question regarding the specific location of the proposed free-standing monument sign. Mr. Freitag explained that the free-standing monument sign would be located 15 feet off the Hoosick Road right of way, and would be located in the lawn area along Hoosick Road. Member Clemente asked about the height of the proposed monument sign. Mr. Freitag stated that the proposed height is 9 feet. Member Clemente asked about the lighting of the proposed monument sign. Mr. Freitag answered that the monument sign would be lit, and would include backlighting with the use of LED lights. The Zoning Board members determined that the application materials were complete, but did request that the applicant submit for the record a written request to the

landlord for placement of Taco Bell signage on the existing free-standing sign located at the entrance to the Price Chopper Plaza, and denial of that request by the landlord. The Zoning Board also stated that they are requiring the landlord to be present at the next Zoning Board meeting to address the issue of use of the existing signboard rather than the requested variance for an additional monument sign. The Zoning Board members determined the application to be complete for purposes of opening the public hearing on this application, and scheduled the public hearing for 6:30pm at its December 17 meeting. This matter is placed on the December 17 agenda, with the public hearing to commence at 6:30pm, noting that the Zoning Board members are requiring written confirmation that the landlord has denied approval to place signage on the existing signboard at the Price Chopper Plaza, and requiring that the landlord be present at the December 17 meeting.

The index for the November 19, 2018 meeting is as follows:

1. Hier - Area variances - Granted with condition;
2. Martell - Area variances - Granted;
3. Macy - Area variances - 12/17/2018 (public hearing to commence at 6:00pm);
4. Duncan - Area variances - 12/17/2018 (public hearings to commence at 6:15pm [38 Duncan Lane] and 6:20 [32 Duncan Lane]);
5. Hospitality Syracuse Inc. - Sign variances - 12/17/2018 (public hearing to commence at 6:30pm).

The proposed agenda for the December 17, 2018 meeting currently is as follows:

1. Macy - Area variances (public hearing to commence at 6:00pm);
2. Duncan - Area variance (public hearings to commence at 6:15pm [38 Duncan Lane] and 6:20 [32 Duncan Lane]);
3. Hospitality Syracuse Inc. - Sign variances (public hearing to commence at 6:30pm).