

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 18, 2019

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, WILLIAM SHOVER and PATRICIA CURRAN.

ABSENT was MARTIN STEINBACH.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairperson Clemente reviewed the agenda as posted on the Town signboard and Town website. Chairperson Clemente noted that the use variance applications submitted by Rensselaer Plateau Alliance/Rensselaer Land Trust are adjourned and will be placed on the December 16, 2019 agenda.

The draft minutes of the October 21, 2019 meeting were reviewed. Upon motion of Chairperson Clemente, seconded by Member Schmidt, the minutes of the October 21, 2019 meeting were unanimously approved without amendment.

The first item of business on the agenda was discussion concerning the use variance application submitted by Carol Young for property located at 45 Norfolk Street. Chairperson Clemente noted that the public hearing on this use variance application had been held and closed at the October 21 meeting. Chairperson Clemente also reviewed the required elements to be considered in connection with a use variance application, stating that the Zoning Board members determined that adequate evidence had been submitted for consideration of all elements for the use variance standards, except that adequate information had not been submitted concerning the issue of whether the property

would yield a reasonable economic return without the benefit of the requested use variance. Chairperson Clemente noted that the Zoning Board had requested information on comparable sales prices for 4-unit apartment buildings and 2-unit apartment buildings in the relevant real estate market, and also economic proof concerning the cost that would be incurred to convert the existing 4-unit building at this location back to a 2-unit building. Chairperson Clemente noted that the applicant had provided a market analysis concerning sales prices for 2-unit buildings in the relevant market as opposed to the proposed sale price for the 4-unit building at 45 Norfolk Street; however, no economic proof had been submitted concerning the costs anticipated for renovating the structure from a 4-unit building to a 2-unit building. Carol Young was present on the application, together with Kevin Avery, a licensed real estate salesperson with Coldwell Banker. Mr. Avery stated that he had prepared the market analysis submitted to the Zoning Board, which notes that sales for 2-unit buildings in the relevant market range from \$140,000 to \$180,000, and that he would estimate that the property at 45 Norfolk Street would be listed around \$180,000 to \$190,000 based on the market as a 2-family structure. It is noted that the sales price as a 4-unit building is \$249,000. Mr. Avery then stated that the cost to renovate the building to a 2-unit building would include significant electric work, stairwell renovation, significant plumbing work, significant internal remodeling, and that all this work was complicated since the structure is located on a concrete slab as opposed to a full basement. Mr. Avery also noted that the property did sell as a 4-unit structure in 2004, the time when Young acquired the property. Member Curran inquired as to the size of each unit at 45 Norfolk Street. Mr. Avery stated that he didn't have that information handy, but estimated that each unit was approximately 900–1,000 square feet. Chairperson Clemente again reviewed the standards for consideration of competent financial evidence as to whether a reasonable economic return can be achieved for any use allowable in the zoning district, stating that while information on comparable sales had been provided, economic

proof as to the cost of renovations to make the structure at 45 Norfolk Street into a 2-unit facility had not been submitted. Member Schmidt inquired whether formal contractor estimates were required concerning renovation to make this structure a 2-unit building. Attorney Gilchrist stated that competent financial evidence is required for the Zoning Board to consider this element, and while Mr. Avery has submitted proof of comparable sales as a licensed real estate salesperson, there is not competent financial information concerning required renovation costs before the Zoning Board. Mr. Avery stated that he had extensive background in contracting and building renovation, and states on the record that it would be expensive to renovate this house to a 2-unit structure. Attorney Gilchrist stated there was no evidence before the Zoning Board that Mr. Avery was qualified to render an opinion as to renovation costs, and that while some competent financial information had been submitted to the Zoning Board in terms of comparable sales for a 2-unit structure, there was no competent financial information in front of the Zoning Board concerning renovation costs, which the Zoning Board members had requested at the October 21 meeting. Ms. Young asked whether the Zoning Board required the contractor estimates for renovation costs to be in writing. Attorney Gilchrist stated that the Zoning Board members had requested that information, and it should be submitted in written form for the record. Member Schmidt stated that the Zoning Board was not trying to delay this matter, but it must follow the law and should have competent financial information on the issue of reasonable economic return before the Zoning Board acts. Mr. Avery stated that there was a risk Ms. Young was going to lose the current sales contract, and that this matter had been pending since September. Attorney Gilchrist stated that the Zoning Board was in no way delaying this application; that a use variance is required in order to put this property into compliance with the Brunswick Zoning Law; that the use variance application had been submitted in September; that the Zoning Board conducted and closed its public hearing at the October 21 meeting; that the Zoning

Board requested additional competent financial information at the October 21 meeting, and the applicant has not submitted complete information to the Zoning Board members on that issue; and that the Zoning Board was acting in full compliance with the statutory timeframes for consideration of this use variance application. Mr. Avery agreed with all of these points on the record. Mr. Avery did state that there remains the risk that Ms. Young was going to lose the current sales contract. Attorney Gilchrist stated that any risk of losing a sales contract was not due to the procedure before the Zoning Board of Appeals, but rather due to the applicant not supplying the competent financial information requested by the Zoning Board members at the October 21 meeting. The Zoning Board was sympathetic with the risk of losing a sales contract, and the amount of time until the regular December meeting. Attorney Gilchrist noted that the Zoning Board could consider holding a special meeting in this matter. Chairperson Clemente asked Mr. Avery as to what was the specific date when the sales contract would expire. Mr. Avery stated that there was not an exact date, but the potential purchaser could cancel the contract, and he did not know whether the purchaser would cancel the contract. Mr. Avery conceded that the purchase contract could be cancelled immediately, or could be further extended to meet the Zoning Board's schedule. Chairperson Clemente inquired as to the amount of time needed for the applicant to secure the requested competent financial information from a contractor concerning renovation costs. Mr. Avery stated that he would work on getting that information to the Zoning Board during the current week. Chairperson Clemente inquired whether the Zoning Board members were in agreement with holding a special meeting on this matter. The Zoning Board members concurred. The Zoning Board will hold a special meeting for the Young use variance application deliberation on Tuesday, November 26, 2019, commencing at 6:00pm. Attorney Gilchrist stated that a notice of special meeting would be prepared for posting and publication.

The next item of business on the agenda addressed by the Zoning Board was the use variance application submitted by Blue Sky Towers II, LLC/Cellco Partnership d/b/a Verizon Wireless, seeking a public utility use variance for property located on Creek Road for the construction of a monopole cell tower. David Brennan, Esq., of Young Sommer law firm was present for the applicant. Also present was Ronald Laberge, P.E., the Town consulting engineer to review the use variance application for the Zoning Board of Appeals, as well as the site plan and special use permit application for this proposed facility pending before the Brunswick Planning Board. Mr. Brennan handed up to the Zoning Board members a submittal dated November 18, 2019, which includes a response to review comments prepared by Laberge Group, as well as the balloon test visual resource evaluation report. Mr. Brennan also stated that there was a revised set of plans, which shows the same proposed locations for the cell tower, that now shows both Verizon and AT&T as located on the tower, as well as the plans showing a third antenna array for a future co-locator. Mr. Brennan discussed the balloon test visual resource evaluation report in general terms, noting that the Zoning Board's review engineer will need time to review and comment on the report, and also that the Zoning Board members would need time to review the report. Mr. Brennan did note that the proposed tower location with a 240-foot tower was shown to be very visible through the balloon test, and that the proposed location with an 80-foot cell tower had the least visibility given topography and existing trees. Mr. Brennan then generally discussed procedure, noting that he would ask that the application be placed on the December Zoning Board agenda for purpose of discussing the November 18 submittals to determine whether the application was complete for purposes of scheduling a public hearing. Mr. Brennan also noted that the Planning Board was serving as SEQRA lead agency, and that SEQRA would need to be completed before any action was taken on the use variance application. Mr. Brennan also stated that he had discussed with Attorney Gilchrist the possibility of a joint public hearing with the Planning

Board and Zoning Board of Appeals, so that both boards could hear all public comments together. The Zoning Board also discussed with Mr. Brennan the submission of application documents in electronic format for posting on the Town website. Mr. Brennan will coordinate with the Town on that submission. This matter is placed on the December 16 agenda for discussion of the November 18 submittal, balloon test report, and completeness of the use variance application.

The next item of business on the agenda was the area variance application submitted by Gary Skiff for property at 4 Greene Street. The applicant was not present.

The next item of business on the agenda was the area variance application submitted by Brown/Trifocal Brewing Inc. for property located at 138 Brick Church Road. The applicant seeks area variances for an existing garage structure at this property for use as a craft brewery. Alex Brown was present for the applicant. Chairperson Clemente confirmed that the requested area variances include the use of a structure that is 53 feet from the front yard lot line, whereas the Brunswick Zoning Law requires a 75-foot front setback distance; and also the use of an accessory structure that is physically located closer to the front lot line than the primary structure on the lot. Mr. Brown confirmed these are the requested area variances pending before the Zoning Board. Chairperson Clemente noted that the Brunswick Planning Board had determined that the special use permit and site plan applications were complete for purposes of scheduling the Planning Board public hearing, and that the Planning Board public hearing on those applications would be held at the December 5 Planning Board meeting. Chairperson Clemente noted that the Planning Board has put the special use permit and site plan application on its November 21 meeting agenda for purposes of discussing any additional information to respond to comments of the Rensselaer County Department of Health and New York State Department of Transportation, as well as the status of an engineering report and stormwater report for the proposed project. Mr. Brown stated that he is continuing to work on

response to the comment of the Rensselaer County Department of Health, particularly in terms of the necessary separation distance between the well and septic for this proposal, which will need to be 200 feet of separation distance, and that he would need to change the proposed location for the well and septic. Mr. Brown stated that he was also looking into the option of tapping into the public waterline on Brick Church Road. Mr. Brown also stated he continues to work with the New York State Department of Transportation concerning the proposed driveways, noting that NYSDOT did not have any issue with the driveway locations, but that NYSDOT did want the widths of the driveways reduced. Mr. Golden stated that it was his understanding that the Eagle Mills Fire Department wanted the driveway widths increased. Mr. Brown stated that he will work on the width of the proposed driveways with both NYSDOT and the emergency response requirements. The Zoning Board members reviewed the application materials, and determined them to be complete for purposes of scheduling the public hearing on the area variance applications. The Zoning Board members scheduled the public hearing for the requested area variances for the December 16 meeting, with the public hearing to commence at 6:00pm. Two neighbors to this project site were present, and stated that they would like a map of the proposal to review. Mr. Golden stated that the application materials were available for public review at the Building Department. Mr. Brown stated that he had reviewed the proposal with the husband of one of the neighbors present, but that he would be happy to review the proposal with her, and also provide a copy of the proposed site plan map to them as well.

It was noted that there was still no one present for the Skiff area variance, and the application was adjourned without date.

Four items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Anthony Arcoleo for property located at 346 Bulson Road. Tim Morse was present for the applicant.

Mr. Morse explained that the area variance application seeks approval to have an accessory structure, which is an existing garage structure, remain on the lot where a new home is being constructed. Mr. Morse explained that there had been an old house on this lot when the garage structure was built, but that the old house had been torn down 8–10 years ago, and a new house is being constructed on the lot. The new house foundation has been set, and the property is looking to maintain the garage structure where it is, but it will be in a location that is closer to the front lot line than the front line of the new home location. Mr. Morse confirmed that no improvements were planned to the garage, and that the new owner was looking to maintain the current garage structure in its current location. Mr. Golden confirmed that the setback for the new home does meet the front setback requirements under the Brunswick Zoning Law, resulting in the garage structure being closer to the front lot line than the new home location. The Zoning Board members reviewed the application materials, and deemed them complete for purposes of scheduling a public hearing. This matter is scheduled for a public hearing at the December 16 meeting, to commence at 6:15pm.

The second item of new business discussed was a sign variance application submitted by AJ Sign Company for property located at 42 White Church Lane. The Brunswick Church is proposing to remove an existing wooden sign along White Church Lane and Route 351, and replace it with a new electronic digital sign. Emma VanVorst was present for AJ Sign Company. Ms. VanVorst stated that the church had recently rebranded its logo, and was looking to replace their existing sign with the new electronic digital sign which will incorporate the new church logo. The variance application seeks a variance for both the height of the proposed electronic sign as well as the size of the proposed electronic sign. The Brunswick Sign Law allows a sign to be 4 feet high maximum at this location, where the applicant is proposing the electronic sign to be 8 feet 9 inches in height. The Brunswick Zoning Law allows a sign to be 32 square feet in size at this location, where the applicant is seeking

an electronic sign of 53 square feet in size. The application also indicates that the digital sign display will be turned off from 11pm to 5am. Chairperson Clemente noted that the Brunswick Zoning Law requires the electronic sign to be off from 11pm to 7am. Ms. VanVorst stated that this was acceptable, and the application will be corrected on the record. It was confirmed that the proposed new electronic sign is in the same location as the existing wooden sign. Ms. VanVorst stated that the old wooden sign was lit at night, but that it was not a digital or electronic sign. Member Shover inquired why the sign needed to be 8 feet 9 inches in height. Ms. VanVorst stated that this height would allow for a digital display area that was standard for commercial signs, and allowed adequate size so that the sign could be seen easily from Route 351 given its location set back from the road. The Zoning Board members noted that this area was residential in nature, not commercial. The Zoning Board members reviewed the schematic of the proposed digital sign, noting that there was a masonry stone base, a solid portion depicting the new church brand, a large digital display area, and also an arch at the top of the sign which was designed to be consistent with the framing in the main church building. Chairperson Clemente noted that the sign is beautiful, but it is definitely very tall for this location. Ms. VanVorst stated that it was important to have the digital display area as proposed, which would allow the sign to be easily seen, and which would allow the church to promote new membership, increase communications with community members, be used for fundraising, and promote church activities. Chairperson Clemente noted that the applicant could consider keeping the size of the digital display, but may want to consider reduction of other portions of the sign to reduce the overall height. Mr. Golden also discussed the illumination of the sign, and whether it met the Brunswick Sign Law requirements for foot candle limitations. Chairperson Clemente also noted that the Brunswick Zoning Law does place limitations on digital sign displays, which must be followed in this case. Ms. VanVorst understood the comments of the Zoning Board members in terms of the proposed sign

height, and stated that she would review these comments with her client. The Zoning Board members deemed the application materials to be complete for purposes of scheduling the public hearing on this application. The public hearing is scheduled for the December 16 meeting to commence at 6:30pm.

The third item of new business discussed was an area variance application submitted by Brian Gingeresky for property located at 10 Sandford Avenue. Mr. and Mrs. Gingeresky were present, and explained that their residential property is located in the R-9 Zoning District; that the existing home is located 20 feet off the front property line, where the Brunswick Zoning Law requires a 30-foot front yard setback; that the existing home is located 9.7 feet from the side yard lot line, where the Brunswick Zoning Law requires a 10-foot side yard setback; that an existing detached garage is located 6 feet from the rear property line, where the Brunswick Zoning Law requires a 20-foot rear setback for accessory structures; and that the garage is located 5.3 feet from the side lot line, where the Brunswick Zoning Law requires a 10-foot side yard lot line setback. Mr. Gingeresky explained that his home was built several years ago, and that what he is proposing to do currently is to construct some additions to the home, as well as extend the accessory detached garage to convert it from a single-car garage to a two-car garage. The Zoning Board members and Attorney Gilchrist discussed the lot map, including the location of the proposed additions to the home as well as the proposed addition to the accessory detached garage, and determined that the two needed area variances include a front lot line setback for the proposed front porch addition, which is proposed to be 14 feet from the front lot line whereas the Brunswick Zoning Law requires a 30-foot front yard setback; and also an area variance for the rear lot line setback for the proposed addition to the garage structure, which is proposed to maintain an existing 6-foot rear lot line setback consistent with the existing garage structure, where a 20-foot rear lot line setback is required under the Brunswick Zoning Law. The Zoning Board members determined that the application materials were complete for purposes of

scheduling the public hearing. This matter is scheduled for public hearing at the December 16 meeting to commence at 6:45pm.

The fourth item of new business discussed was an area variance application submitted by Frederick Stafford for property located at 681 Farm to Market Road (Route 351). The applicant seeks to build a 16-foot by 10-foot wood shed, which structure will meet all the required setbacks for the accessory structure itself, but that the accessory structure location would be closer to the front lot line of this property than the main residential structure, necessitating the need for an area variance. Mr. Stafford explained the proposal, stating that the wood shed would be used to access wood for heating a portion of his home, and that he does use wood heat as the primary source for heat in a portion of his home. The proposed wood shed would be approximately 3 feet in front of the front line of the main residence on the property. The Zoning Board members reviewed the application materials and deemed them to be complete for purposes of scheduling a public hearing. This application is scheduled for public hearing at the December 16 meeting to commence at 7:00pm.

The index for the November 18, 2019 meeting is as follows:

1. Young - Use variance - 11/26/2019 (special meeting to commence at 6:00pm);
2. Blue Sky Towers II, LLC/Cellco Partnership d/b/a Verizon Wireless - Use variance - 12/16/2019;
3. Skiff - Area variance - Adjourned without date;
4. Brown/Trifocal Brewing, Inc. - Area variance - 12/16/2019 (public hearing to commence at 6:00pm);
5. Rensselaer Plateau Alliance/Rensselaer Land Trust - Use variances - 12/16/2019;
6. Arcoleo - Area variance - Area variance - 12/16/2019 (public hearing to commence at 6:15pm);
7. AJ Sign Company - Sign variance - 12/16/2019 (public hearing to commence at 6:30pm);

8. Gingersky - Area variances - 12/16/2019 (public hearing to commence at 6:45pm);
9. Stafford - Area variance - 12/16/2019 (public hearing to commence at 7:00pm).

The proposed agenda for the November 26, 2019 special meeting is as follows:

1. Young - Use variance.

The proposed agenda for the December 16, 2019 meeting currently is as follows:

1. Brown/Trifocal Brewing, Inc. - Area variance (public hearing to commence at 6:00pm);
2. Arcoleo - Area variance - (public hearing to commence at 6:15pm);
3. AJ Sign Company - Sign variance (public hearing to commence at 6:30pm);
4. Gingersky - Area variances (public hearing to commence at 6:45pm);
5. Stafford - Area variance (public hearing to commence at 7:00pm).
6. Blue Sky Towers II, LLC/Cellco Partnership d/b/a Verizon Wireless - Use variance;
7. Rensselaer Plateau Alliance/Rensselaer Land Trust - Use variances.