

## **Zoning Board of Appeals**

TOWN OF BRUNSWICK  
336 Town Office Road  
Troy, New York 12180

### **MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS REGULAR MEETING HELD JANUARY 27, 2020**

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

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairperson Clemente reviewed the agenda for the meeting as posted on the Town signboard and Town website.

It was noted that the February 17 meeting date of the Zoning Board of Appeals fell on a holiday, and that it was rescheduled to February 24, 2020 commencing at 6:00pm.

The draft minutes of the regular meeting of the Zoning Board of Appeals held December 16, 2019 were reviewed. Upon motion of Chairperson Clemente, seconded by Member Steinbach, the minutes of the December 16, 2019 regular meeting were unanimously approved without amendment. The draft minutes of the special meeting and public hearing of the Zoning Board of Appeals (jointly held with the Planning Board) held on January 16, 2020 were reviewed. Member Clemente proposed to amend a sentence on page 11 of the draft minutes to read as follows: "The applicant indicated that with respect to Ms. McDonald's notice, the post office indicated that the slip for the certified mail item had been left for the property owner but that the item was not picked up from the post office." A motion was made by Member Steinbach to approve the minutes with the suggested amendment, which was seconded by Member Shover, and was unanimously approved.

The first item of business on the agenda was the sign variance application submitted by AJ Sign Company for the Brunswick Church for property located at 42 White Church Lane. Chairperson Clemente noted that this was a continuation of the public hearing that had begun at the December 16, 2019 Zoning Board of Appeals meeting. The notice of continuation of public hearing was read into the record, with Attorney Tingley noting that the public hearing notice had been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to all owners of properties within 300 feet of the parcel on which the sign would be located. Tom Wheeler and Emma Vanvorst of AJ Signs were present for the applicant. Mr. Wheeler stated that following the public hearing session previously held, the applicant and the church had further evaluated the sign design and made modifications. Mr. Wheeler submitted a drawing of the newly modified sign to each of the Board members. Mr. Wheeler also stated that in reading the Brunswick Code, it was his interpretation that the arches at the top of the sign should not be included in measuring the size of the sign. Mr. Wheeler stated that excluding the masonry base and the arches would result in a sign that was compliant with the Brunswick Code. Mr. Wheeler further stated that the sign will be dimmable and will have an ambient light sensor so that the sign is automatically dimmed during dark hours. He further stated that the sign would be lit enough to be visible, but that the light would be soft light as a result of the dimming feature. Mr. Wheeler further stated that the sign could be manually adjusted so that if the Town determines that the sign is too bright, it could be dimmed further. Member Shover asked whether the height of the sign will stay the same under the proposed revised design. The applicant responded that the total height of the sign from the top of the masonry base to the top of the arches would be 88 inches. The applicant further stated that the size of the display is the same size as had been originally proposed in this application. The applicant stated that the bottom of the sign had changed by removal of the church logo and phone number to simply leave the address of the

church. Mr. Golden stated that the arches at the top of the sign were part of the church's insignia and therefore his department included them in the measurement of the sign size. Attorney Tingley explained that there is a difference between the current application for an area variance, which seeks approval for a sign of a size that is not permitted under the Zoning, and an application for an interpretation, which would seek review of the Building Department's determination as to how the sign should be measured. Attorney Tingley stated that the applicant would need to file a separate application for an interpretation in order to have that issue addressed. The applicant then read provisions from the Brunswick Code relating to sign and measurement of its size. Ms. Vanvorst on behalf of the applicant stated that the trusses on the top of the sign structure are not part of the church's logo, but are consistent with the church's design. Mr. Wheeler stated that the trusses on the top of the sign are part of the structure. Nikki Campbell, from the Brunswick Church, stated that she was the designer of the sign and that the trusses on the top of the sign do not relate to any portion of the church's logo. Chairperson Clemente asked whether the trusses could be eliminated. Ms. Campbell responded that the truss does add stability to the sign, and that the current sign that is on the property is actually taller than the proposal. Mr. Golden stated that the trusses would push out on the side columns, which are not structural, if the trusses were a structural component. Mr. Wheeler stated that the trusses do add support and that the electric panel for the digital display weighs approximately 600 pounds. Further discussion then ensued concerning the trusses and whether or not they provide any structural support for the 600 pound display. Mr. Golden then stated that the address portion of the sign, given the modifications to remove the church logo and phone number, should not be included as part of the measurement of the size of the sign because it constitutes a 911 address. He stated that the portion of the sign that reflects the name of the church and the web address on the newly submitted drawing would be 1,106 square inches, the digital display would be 3,024 square inches, and the area

of the arches would need to be added to those amounts to determine the overall size of the sign. The Board then asked what the height of the address portion of the sign was. The applicant responded that the measurement from the top of the masonry base to the bottom of the electric panel was 19 inches. Further discussion then ensued between the applicant and the Board concerning whether the arches should be considered and the applicant's interpretation of the Zoning Code. Attorney Tingley stated that the applicant can seek to review a formal determination of the Building Department on how the sign should be measured, but that the current application is one for an area variance and that the standards that would be applied are set forth by State law. The applicant stated that the original application seeking a 53 square foot sign has been modified so that the total square footage of the sign is now reduced substantially. Mr. Golden then stated that one issue previously raised that still has not been addressed is that the sign is located on a different parcel of real property than the church. Chairperson Clemente then opened up the floor to public comment on the continuation of the public hearing. Dorothy Arthur, 86 White Church Lane, stated that she spoke last time and reiterated that the proposed digital sign would be intrusive to her home by causing light to shine into her home. She further stated that the billboard-sized sign would be inappropriate for the historical neighborhood in which it was proposed. She further stated that the sign will constitute a hazard in that the sign would have lights that would flash on and off. She stated that there have been multiple accidents at the subject intersection including accidents causing fatalities. She stated that White Church Lane intersects with Route 351 and that there are curves on both sides of the approach to the intersection. She further stated that she had been involved in an accident at that intersection, even though she had looked both ways prior to proceeding. Ms. Arthur then displayed a photo on an iPad of an accident scene in which a fatality occurred. Ms. Arthur agreed to email the photograph to the Building Department for inclusion in the record. Ms. Arthur stated that the lights on the sign would be

distracting to drivers and that the sign proposal would result in an additional hazard where a hazardous intersection already exists. Wayne Foy, 259 Sixth Avenue in Troy, stated that the prior speaker is his mother in law and he is speaking in opposition to the proposed sign. Mr. Foy stated that the colors and lights proposed for the sign are not appropriate for the neighborhood; that the sign will increase the danger at the subject intersection; that drivers will be distracted because of the changing images on the sign; that the ability to dim the sign is not sufficient because the sign, including at night, is intended to advertise and is intended to be seen; and that the Town would not have control over the messages that are displayed. Mr. Foy further stated that he believes the archways on the top of the proposed sign should be considered part of the sign for purposes of measuring the size of the sign. Deyva Arthur, 259 Sixth Avenue in Troy, stated that she spoke at the prior public hearing and she stated that the issue of placement of the sign on a separate parcel was raised at the prior public hearing and was discussed at length. She further stated that the sign being a digital sign is a substantial issue and further stated that the sign that currently exists at the location is already too large. Ms. Arthur further stated that the sign would constitute a hazard and would be out of character with the neighborhood and she expressed disappointment that the church was not taking the neighbors' concerns into account. She further stated that the Board should not grant the variance because the church has failed to show a compelling reason for seeking the variance. Ms. Arthur stated that the church's only proffered reason is that they simply want a sign of that size and type. She questioned why the church needed a sign that was so large and was digital. Jennifer Polley, 18 White Church Lane, stated that she was appearing on behalf of herself and her parents. She asked whether the prior comments submitted in the earlier public hearing would be considered, and Chairperson Clemente stated that all prior comments received would be included in the record. Mr. Polley questioned why a digital sign was needed in the middle of a rural area and stated that the existing sign is large but it

is made of wood. She questions the need of the sign to be digital and stated that the digital sign would create traffic hazards. She asked whether any members of the Zoning Board of Appeals were part of the church community. She stated that the church has not interacted with the neighbors concerning the proposal. Ms. Polley submitted a copy of the written statement from her parents. Ms. Polley further stated that the issue of whether the sign could be located on a separate parcel was raised at the last public hearing. Mr. Wheeler, on behalf of AJ Sign, stated that while the public was commenting at this hearing, he had measured the truss area and had added that size into the 28.7 square feet of total sign area displayed on the revised sign drawing. He stated that the new size of the sign area, including the truss area, would be 33.3 square feet. The Zoning Board of Appeals asked AJ Sign to submit a new document showing all of the necessary measurements of the sign area so that the precise variance requested would be clearly shown in the record. The applicant further stated that it would give consideration to further reducing the size of the sign so that the size variance was not required. Attorney Tingley stated that the Board should consider leaving the public hearing open in light of the applicant's need to determine how it wished to proceed. Attorney Tingley further stated that the Board should consider putting the matter on the agenda for the next meeting so that the public is aware of when the public hearing would be continued. Deyva Arthur, who had previously spoken during the public comment on the application, stated that the sign variance includes not only the size, but also should include consideration of the digital nature of the sign. Attorney Tingley asked Mr. Golden whether digital signs were prohibited. Mr. Golden stated that digital signs were not prohibited by the Brunswick Code. Attorney Tingley explained that the variance application would be reviewed under State law standards for area variances, and to the extent the appearance of the sign would be relevant to those criteria, the nature of the sign being digital could be considered by the Board. Ms. Arthur asked if the sign was reduced so that a variance was not needed, would the digital nature of

the sign still be permitted. Mr. Golden and Ms. Clemente explained that the applicant would then work with the Building Department on obtaining a sign permit and the Brunswick Code does include some limitations which may affect the digital sign, including brightness and hours during which the sign must be turned off. Jennifer Polley, who had previously spoken during the public comment, read a provision from the Brunswick Code regarding the timing during which the sign must be turned off. She asked whether the Board would consider the impacts of the digital sign on the neighborhood. Ms. Clemente stated that the Board must apply certain State law standards on any area variance application, and pointed out that the first standard the Board considers includes the impact of the variance on the neighborhood. The Zoning Board of Appeals then determined that the public hearing would be kept open and continued on February 24, 2020 at 6:00pm. Chairperson Clemente then stated that the applicant would be given an opportunity to respond to all public comments following the close of the public hearing. Ms. Clemente further stated that she encouraged the applicant and the neighbors to meet and attempt to resolve the issues concerning the sign. Ms. Campbell stated that the church would be willing to discuss the matter with the neighbors. William Darling, Sr., White Church Lane, then spoke and stated that he previously spoke at the last public hearing on the sign. He reiterated that he was totally opposed to the sign, and stated that he is a member of the church and does not believe that the sign is appropriate. Louis Hutter, 228 White Church Road, stated that the issue of whether the sign could be located on the subject parcel was raised at the last meeting. He asked how the sign size would be calculated. He further asked what size sign the Board is now considering in connection with the application. He stated that the new design that had been passed out that evening appears to have a different size than the original application. He further stated that the church does not need the arched design at the top of the sign. He stated that the arched design appears to be decorative rather than structural. Randy Foster, 30 White Church Lane, stated that the

church has developed significantly over the years and that the church's development has been significantly impacting the neighbors. He questions why the existing sign has been allowed if it is not compliant with the Zoning Code. He further asked whether the sign was actually located on church property. He asked how close the sign was to the property line. Mr. Golden stated that the setback for signs under the Brunswick Zoning Code varies based upon the frontage of the parcel. Mr. Golden further stated that his office is continuing to look for the sign permit issued in connection with the existing sign. Mr. Foster then stated that the church does not need a digital sign and he further stated that the neighbors of the church will see the sign lit until at least 11pm. He further stated that the large size of the sign is the issue the neighbors have, and they have that same issue with the existing sign. Amanda Stan, 25 White Church Lane, stated that she agrees with the neighbors that have spoken in opposition to the sign variance and stated that the proposed sign simply does not fit with this neighborhood. Wayne Foy, who previously spoke during the public hearing, stated that he is disappointed that the church views neighbors as being either friendly or as opponents in this process. He further stated that the proposed sign will change the neighborhood from the historic residential area to a commercial area. Mr. Foy stated that first the church expanded its size, and now it is proposing a digital sign. Mr. Foy stated that the sign will impact property values in the neighborhood. Mr. Polley who previously spoke during the public hearing, asked why they needed a digital sign. She stated that this particular area of Town is not an appropriate area for the digital sign. Ms. Campbell, on behalf of Brunswick Church, stated that it was her oversight to not first contact the neighbors concerning the sign and she apologized. She stated that the church wants to blend in with the neighborhood, and that the existing sign is difficult to maintain in part because it is difficult to find parts. She further stated that the church does not intend to have animations or flashing, and that the church fully intends to comply with the Town Code with respect to digital signage. She further



stated that the proposed sign is not a “neon” sign, and that it will be dimmable. The Zoning Board then agreed that the public hearing would be continued to February 24 at 6:00pm, and it determined to move on to the next item on the agenda.

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. Chairperson Clemente stated that the Zoning Board of Appeals attorney was continuing to review the record to make sure that everything was in order. She stated that unfortunately the review had not yet been completed, but that the Zoning Board of Appeals was willing to consider scheduling a special meeting for February 6 at 6:00pm to address the Trifocal Brewing application. Chairperson Clemente stated that the application would require approval also of the Planning Board, and it was her understanding that the matter was on the Planning Board agenda for February 6, 2020, which meeting would start at 7:00pm. Member Steinbach asked the applicant (represented by Alex Brown) whether the applicant was available to attend a special meeting at 6:00pm on February 6. Mr. Brown responded that he was available on that date. Member Steinbach then made a motion to schedule a special meeting of the Zoning Board of Appeals to be held on February 6, 2020 beginning at 6:00pm, for purposes of addressing the Trifocal Brewing area variance application. The motion was seconded by Member Shover, and was unanimously approved.

There were five items of new business discussed.

The first item of new business discussed was the area variance application submitted on behalf of Donald White for property located at 50 Sycaway Avenue. Mark Danskin, Land Surveyor, appeared on behalf of the applicant. Mr. Danskin stated that the applicant was proposing to construct a detached in-law apartment on the premises, which is located in the R-9 Zoning District. Mr. Danskin stated that the Zoning District required a 30-foot front and rear yard setback, along with 10-

foot side yard setbacks. He further stated that the lot is irregularly shaped. He stated that the front setback sought by the applicant is 19.7 feet, and the rear yard setback sought by the applicant is 17.9 feet. Mr. Danskin stated that the edge of pavement in relation to the front lot line is skewed such that it appears that the proposed in-law apartment would be set further back than the 19.7 feet requested. He stated that the irregular shape of the lot imposes practical difficulties on construction of the in-law apartment in compliance with the Zoning requirements. The southeastern side of the lot is between 110 and 120 feet deep, whereas the northwestern end of the lot is only approximately 11.5 feet deep. He stated that this shape gives the lot a very small building envelope and further stated that the existing structures on the site do not comply with the current Zoning requirements. Chairperson Clemente asked the height of the proposed in-law apartment. Mr. Danskin replied that the height would be one story, and would be similar in appearance and height to the garage that's currently located on the property. Mr. Danskin further stated that the 19.7-foot setback from the front lot line is the same setback as the current residence located on the property. The Zoning Board of Appeals determined that the application was sufficiently complete for purposes of scheduling a public hearing. The Zoning Board of Appeals scheduled a public hearing on the application to be held on February 24, 2020 commencing at 6:05pm.

The next item of new business discussed was the area variance application submitted by Edward Frances Malone, Jr. for property located at 137 Bald Mountain Road. Mark Danskin, Land Surveyor, and Mr. Malone appeared on behalf of the applicant. Mr. Danskin explained that the purpose of the application was to allow construction of an addition to the existing 1-story house which will be occupied by a grown child. Mr. Danskin and Mr. Malone stated that although the application references a bathroom and kitchen in the addition, that was inaccurate and they were simply proposing an addition, not a separate apartment. Mr. Malone confirmed that the addition will not include a

bathroom or kitchen. The addition will include only a living room area and a bedroom. Mr. Danskin stated that the lot has two front lot lines because it borders Charl Lane and Bald Mountain Road. Mr. Danskin stated that the application seeks a variance from the 50-foot setback requirement for a front yard on the Charl Lane side of the lot to allow construction of the proposed addition within 45 feet of the front lot line along Charl Lane. Mr. Malone stated that an area variance had previously been given in August to allow a 1.6-foot variance from the 50-foot requirement, but that upon surveying the property again, he learned that an approximate 5-foot variance would be required. The Zoning Board determined that the application was sufficiently complete for purposes of scheduling a public hearing. The Zoning Board scheduled a public hearing on the application for February 24, 2020 to commence at 6:10pm.

The next item of new business discussed was the area variance application submitted by Andrew Golden for property located at 12 Victoria Avenue. Chuck Golden, Brunswick Building Department, stated that the applicant is his son and accordingly he was not going to participate in the application hearing or review and he left the room. Andrew Golden appeared on his own behalf. Mr. Golden stated that his proposal sought permission to build a two-car garage within a 30-foot rear setback. Mr. Golden explained that the subject lot was shaped like an L and that the proposed garage would be located in the northeasterly part of the lot. Mr. Golden stated that the required rear setback for an accessory structure garage is 20 feet and that his proposal would place the garage approximately 8 feet from the rear lot line. Chairperson Clemente asked whether the garage could be relocated towards Billings Avenue. She noted that the map of survey showed the gravel driveway not extending fully to the location of the proposed garage. Mr. Golden stated that the survey does not accurately reflect the full length of the gravel driveway and that in fact fully extends to the proposed location. He also stated that the survey does not show the topography of the lot, and that the lot has a fairly

significant rise from Billings Avenue to the rear of the lot. He stated that substantial groundwork would be required in order to pull the proposed garage forward because of the change in topography. Mr. Golden also stated that there is an existing fence located on the property owned by the neighbors to the rear closest to the proposed garage, which would help to screen the garage. Mr. Golden further stated that if any Zoning Board members wish to visit the site, he granted them permission to do so. The Zoning Board determined that the application was sufficiently complete for purposes of scheduling a public hearing. A public hearing was scheduled for February 24, 2020 to commence at 6:15pm.

The next item of new business discussed was the area variance application made by Expedite the Diehl for property located at 780 Hoosick Road. Tara Puntasecca appeared on behalf of the applicant. Ms. Puntasecca stated that the existing use of the property was a McDonald's fast food service restaurant. She stated that a previous sign variance had been granted for the current drive-thru signage. She stated that the current application seeks to allow McDonald's to replace the current drive-thru signage by removing the existing menu boards and replacing them with two menu boards and one pre-menu board. Ms. Puntasecca stated that the proposal would reduce the existing non-conformity and that there would be a substantial reduction in overall sign area if the variance is approved. Ms. Puntasecca stated that the need to replace the existing menu boards is a national franchise program requirement. Ms. Puntasecca said that each of the two order menu boards proposed would be 17.6 square feet each and the pre-order browse menu board proposed would be 8.8 square feet. Ms. Puntasecca further stated that the signs would be digital signs but that they would only change three times per day. Ms. Puntasecca further stated that the proposed signs do not emit any more light than the existing signs. Ms. Puntasecca further stated that the footers for the proposed new signs would be located immediately adjacent to the footers of the existing signs so that the location

of the signs would not change significantly. The Zoning Board of Appeals determined that the application was complete for purposes of scheduling a public hearing. The public hearing was scheduled for February 24, 2020 to commence at 6:20pm. Ms. Puntasecca inquired whether the Board anticipated the applicant's presence to be necessary at the public hearing. Ms. Puntasecca was advised that the applicant should be present at the public hearing to present the proposal and to respond to comments and questions.

The next item of new business discussed was the sign variance application submitted on behalf of Walmart for property located at 760 Hoosick Road. Marybeth Gregory appeared on behalf of BRR Architecture, the consultant representing the applicant. Ms. Gregory stated that the purpose of the area variance application for signage was to permit a white and yellow "[spark] Pickup" sign on the wall of the building, as well as ten additional parking stall signs to be installed at the designated online order pickup parking areas. Ms. Gregory identified the online order pickup area and outlined generally how the online order pickup would work. Ms. Gregory stated that the total size of the sign on the wall of the building would be 65.43 square feet, and each of the ten parking space signs will be 7.75 square feet, for a total of 77.5 square feet. Ms. Gregory stated that the Zoning Law requires no more than two signs, and that the proposal seeks approval for the five currently-existing signs, the new proposed wall sign, and the new proposed ten parking stall signs. She further stated that the Zoning Law limits the total signage area to be no greater than 300 square feet, and that the proposed signage (inclusive of the existing signs) would exceed 300 square feet. The application materials reflect that the total signage sought on the site would be 372.96 square feet. The Zoning Board of Appeals determined that the application was sufficiently complete for purposes of scheduling a public hearing. The Zoning Board of Appeals scheduled the public hearing to be held on February 24, 2020 commencing at 6:25pm.

The index for the January 27, 2020 meeting is as follows:

1. AJ Sign Company - Sign variance - 2/24/2020 (public hearing to continue at 6:00pm);
2. Brown/Trifocal Brewing Inc. - Area variance - 2/6/2020 (special meeting);
3. White - Area variance - 2/24/2020 (public hearing to commence at 6:05pm);
4. Malone - Area variance - 2/24/2020 (public hearing to commence at 6:10pm);
5. Golden - Area variance - 2/24/2020 (public hearing to commence at 6:15pm);
6. Expedite the Diehl (McDonald's) - Sign variance - 2/24/2020 (public hearing to commence at 6:20pm);
7. Walmart - Sign variance - 2/24/2020 (public hearing to commence at 6:25pm).

The proposed agenda for the February 6, 2020 special meeting currently is as follows:

1. Brown/Trifocal Brewing - Area variance.

The proposed agenda for the February 24, 2020 regular meeting currently is as follows:

1. AJ Sign Company - Sign variance - public hearing to continue at 6:00pm;
2. White - Area variance - public hearing to commence at 6:05pm;
3. Malone - Area variance - public hearing to commence at 6:10pm;
4. Golden - Area variance - public hearing to commence at 6:15pm;
5. Expedite the Diehl (McDonald's) - Sign variance - public hearing to commence at 6:20pm;
6. Walmart - Sign variance - public hearing to commence at 6:25pm.