

Planning Board

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

MINUTES OF THE PLANNING BOARD MEETING HELD NOVEMBER 4, 2021

PRESENT were RUSSELL OSTER, CHAIRMAN, DONALD HENDERSON, LINDA STANCLIFFE, and DAVID TARBOX.

ABSENT were J. EMIL KREIGER, KEVIN MAINELLO, and ANDREW PETERSEN.

ALSO PRESENT were CHARLES GOLDEN, Brunswick Building Department and WAYNE BONESTEEL, P.E., Review Engineer to the Planning Board.

Chairman Oster reviewed the agenda for the meeting, as posted on the Town sign board and Town website.

Before the Planning Board opened a public hearing on the Zachary Froio special use permit application, Chairman Oster asked Mr. Froio to review how his business would operate, in order to determine if it would include retail sales. Mr. Froio explained the purchasing process for his business, stating that a customer would contact him first and that he would then contact a firearm manufacturer, as a regular citizen cannot directly communicate with a firearm manufacturer. Mr. Froio stated that the customer would pay him for the firearm, he would order the firearm from the manufacturer, the firearm would then be shipped to a firearm store/dealer, who would also possess a Federal Firearms License (FFL), and the store/dealer would run a background check on the customer before the customer could pick up the firearm. Mr. Froio confirmed that he would charge a mark-up fee and sales tax on all firearms he sold. Mr. Froio stated that he would not have a showroom for firearms at his house, that he would have no customers coming to his house, and

that he would not have parking for customers or any signage for his business at his property. Mr. Froio also stated that his business would not be limited to New York State, as he would be able to work with customers, firearm manufacturers, and firearm dealers in all 50 States. Attorney Gilchrist stated that it is currently unclear whether or not Mr. Froio's business constitutes a home occupation as defined in the Brunswick Zoning Law, and that a zoning issue arises as to whether the proposed use is a home occupation or whether it constitutes retail sales, and that the Planning Board will need a determination from the Brunswick Building Department on the issue as the Planning Board does not have the authority to interpret the Brunswick Zoning Law. Attorney Gilchrist also advised that the Planning Board not make a determination on Mr. Froio's application at the current meeting as the Building Department had not yet made its determination. Chairman Oster then opened the public hearing. Attorney Gilchrist read the notice of public hearing into the record, with the notice of public hearing having been 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. Attorney Gilchrist also stated that the application had been forwarded to the Rensselaer County Planning Department, who had responded with a recommendation that local consideration shall prevail. Mr. Froio then reviewed his application, discussing his background, why he was applying for the special use permit, that he in the process of obtaining an FFL to sell firearms, ammunition and firearm accessories, and that his business will be entirely done online and over the phone. Mr. Froio stated that if approved, he would have to start a business as FFLs cannot be obtained for personal use, and ATF checks in to confirm that FFL holders are trying to run a profitable business. Mr. Froio also stated that the next step in the process of obtaining an FFL is oversight and licensing with New York State and ATF, and that local review must be done before State and Federal review. Chairman Oster then opened the floor for the receipt

of public comment. Jim Tkacik, of 387 Brunswick Road, stated that his primary concern was the scale of the business, and asked if Mr. Froio would physically take possession of the firearms at his residence. Mr. Froio confirmed that some of the firearms would be sent to his house before he sent them to a firearms dealer for transfer to the customer. Mr. Tkacik asked how many firearms he anticipated selling per month. Mr. Froio stated that he expected to mostly sell firearm accessories, as they are more profitable, and that he anticipated only selling about 10-20 firearms per year. Mr. Tkacik asked why Mr. Froio's business was even necessary, and why a customer could not simply order a firearm from a manufacturer. Mr. Froio stated that most people cannot buy from a firearm manufacturer as only an FFL holder can buy from a firearm manufacturer and that a manufacturer must send the firearm to another FFL holder. The FFL holder, Mr. Froio in this case, then sends the firearm to a firearm dealer, who also is an FFL holder, and who completes the background check on the customer before either sending them firearm to the customer or allowing the customer to come to pick up the firearm. Mr. Froio also clarified that he will pay a transfer fee to the firearm dealer. Mr. Tkacik asked who performs a background check on the customer. Mr. Froio stated that he will if he sends the firearm directly to the customer after receiving it from the manufacturer, or the firearm dealer will if he sends the firearm to a dealer. Mr. Tkacik noted that firearms will be shipped via FedEx, UPS, or the U.S. Postal Service and asked how Mr. Froio would stop delivered firearms from being taken by porch pirates. Mr. Froio stated that the box a firearm is shipped in has no markings stating that a firearm is inside the box, but these boxes and packages require a signature in order to be picked up, so that even though a postal worker or delivery person would not know what was inside the package, they would not be able to deliver the package without Mr. Froio personally taking the package and signing for it. Mr. Tkacik stated that just because a delivery person is required to collect a signature in order to deliver

a firearm does not mean they will do it and there's still a chance they might just drop off the package with the firearm on Mr. Froio's doorstep. Mr. Froio noted that delivery people are required by federal law to collect a signature before delivering a firearm and that if they don't, they would be breaking that federal law. Mr. Tkacik stated that Mr. Froio's property does not have a drop-off zone for packages. Mr. Froio stated that he has a long driveway, meaning that any potential porch pirates could not take just a few steps off the road or sidewalk and be at his front door. Mr. Tkacik noted that delivery drivers leave their packages unattended when they leave their truck to deliver a package. Mr. Froio stated that the same delivery drivers already use the same trucks to deliver products to stores and do so without incident, including delivering firearms to stores like Walmart and Dick's Sporting Goods. Mr. Tkacik stated that there is significantly better security at a store than at a private residence, and expressed safety and security concerns in the neighborhood should the application be approved. Mr. Tkacik asked how Mr. Froio would send the firearms he receives from a manufacturer either directly to a customer or to a firearms store/dealer. Mr. Froio stated that he would send the firearms and accessories out by FedEx, UPS, or the U.S. Postal Service, the same way he received them, and that there are specific security requirements for shipping firearms that he would be forced to follow. Mary Krenceski, also of 387 Brunswick Road, stated that she personally knows victims of gun violence, reviewed data concerning firearm injuries and deaths, and expressed a great concern for the safety of the Town of Brunswick due to an increase in the number of firearms. Kathy Betzinger, of 1 Valley View Drive, asked if Mr. Froio's business would be the first non-brick and mortar firearms distributor in New York State. Mr. Froio stated that it would not and that these types of businesses are common in New York State and have been for some time. Ms. Betzinger asked how long it takes to get an FFL. Mr. Froio stated that it is a several month process, that he has already been working toward obtaining a special use permit from the

Planning Board for a few months, and that he will next have to undergo a review with New York State, then federal review with the ATF, which will consist of a several hour on-site interview and inspection of his home for safety and security purposes, and that the entire process could be completed in February or March at the earliest. Ms. Betzinger asked if the Brunswick Building Department made the determination on the special use permit. Attorney Gilchrist clarified that the Building Department would only make a determination on the zoning issue, after which the Planning Board would determine whether or not to grant the special use permit. Ms. Betzinger asked if allowing this use would set a precedent in the Town of Brunswick. Chairman Oster stated that no one has previously applied for a special use permit for the home occupation for the sale of firearms. There were no further public comments on the application. Chairman Oster made a motion to close the public hearing, which was seconded by Member Henderson. The Planning Board voted unanimously to close the public hearing.

The first item of business on the agenda was a special use permit application submitted by Zachary Froio for property located at 502 Pinewoods Avenue. Zachary Froio was present to review the application. Chairman Oster told Mr. Froio that he is required to respond to all public comments made at the public hearing in writing. Chairman Oster also stated that the Brunswick Building Department will issue a determination on the zoning issue by the Planning Board's next meeting on November 18. Member Stancliffe asked that if once Mr. Froio receives a firearm from a firearm manufacturer, if he could then transfer the firearm to another FFL holder. Mr. Froio confirmed that he could do that, explaining that the firearm's serial number would initially be in Mr. Froio's name, then would be transferred to the other FFL at the same time the firearm was. Mr. Golden asked if there would be any additional cost other than a transfer fee when Mr. Froio sent a firearm to another FFL holder. Mr. Froio stated that there would not be. Chairman Oster asked Mr. Froio if he would

only be selling new firearms or if a customer could ask him to seek out an older firearm. Mr. Froio confirmed that he would be able to look for older firearms at the request of a customer, but that the searching and shipping/transfer fees would not make it economically feasible for him to do so very often. Member Tarbox asked when the background check on the customer would be done. Mr. Froio stated that he would perform the background check on the customer after receiving the firearm from the manufacturer and before he sent it to the customer or to the firearm dealer. Member Tarbox asked what would happen if the customer failed the background check, since Mr. Froio would already have the firearm in his possession at that time. Mr. Froio stated that he could either sell the firearm back to the manufacturer, or try to sell it to someone else himself. Member Tarbox asked if Mr. Froio would have any other employees and stated that he would not. Chairman Oster asked Mr. Froio if he would be allowed to accept surrendered firearms from members of the public. Mr. Froio confirmed that he would be able to if it was allowed under his FFL, and that if that were to happen, he would trade in the firearm. This matter is placed on the November 18 agenda for further deliberation.

The second item of business on the agenda was a site plan and minor subdivision application submitted by Matopato, LLC for property located at 291 Oakwood Avenue. Thomas Murley was present to review the application. Mr. Murley stated that the bus company told him there was too much opposition to the project and that they were withdrawing their proposal to park buses on his property; therefore, Mr. Murley was withdrawing the site plan application. However, Mr. Murley wanted to continue with the minor subdivision application as he would be able to sell or lease the subdivided parcel in the future. Attorney Gilchrist stated that a public hearing had already been held for the subdivision, notice of which had been sent to the City of Troy, and Mr. Bonesteel had reviewed the minor subdivision application. Mr. Bonesteel asked if an easement

would be necessary for the driveway on the property. Attorney Gilchrist stated that there should be a cross-easement for access to the property, utilities, and stormwater. Attorney Gilchrist also stated that the plat on the property must comply with subdivision regulations. Member Stancliffe asked if the Environmental Assessment Form (EAF) would need to be revised due to the site plan application being withdrawn. Mr. Bonesteel stated that the EAF should be revised and resubmitted. This matter is placed on the December 2 agenda for further deliberation.

The third item of business on the agenda was a site plan amendment submitted by David Leon for property located at 660 Hoosick Road. Walter Lippmann, Project Manager with M.J. Engineering and Land Surveying, P.C., was present for the applicant. Mr. Bonesteel stated that he had completed his review of the stormwater amendment to the project and sent comments to the applicant, that the applicant had sent responses to those comments to him, and that he finds the applicant's responses acceptable. Mr. Lippmann reviewed the responses to the stormwater comments, and also stated that NYS DOT had submitted a letter concerning the elimination of the cross-connectivity over Ferdinand Avenue, and that NYS DOT approves of the traffic signal installation without the cross-connection over Ferdinand Avenue. Mr. Lippmann stated that the applicant was requesting the 50-foot easement leading to the stormwater pond be reduced to 30 feet since no public road will be involved. Attorney Gilchrist stated that Bill Bradley from the Town of Brunswick Water Department should review the applicant's responses to Mr. Bonesteel's stormwater comments and also confirm that all of Mr. Bonesteel's comments have been adequately addressed, and also address the reduction of the easement width. Mr. Bonesteel asked for clarification on how vegetation would be removed on the site and Mr. Lippmann explained that process. This matter is placed on the November 18 agenda for further deliberation.

The fourth item of business on the agenda was a waiver of subdivision application submitted by Sandra Plumb for property located at 307 Sweetmilk Creek Road. No one was present to review the application. This matter is tentatively placed on the November 18 agenda for further deliberation.

The fifth item of business on the agenda was a waiver of subdivision application submitted by Michael Singleton for property located at 11 Checkerberry Lane and 40 Colehamer Avenue. William Aram, owner of 11 Checkerberry Lane, was present to review the application. Mr. Aram stated that he and Mr. Singleton were simply just swapping strips of land in order to adjust each of their boundary lines. The Planning Board reviewed the lot line adjustment on a map of the site, confirming that no new lots would be created by this action. Member Tarbox asked why a small strip of land between the two parcels was not being included in the lot line adjustment. Mr. Aram stated that Mr. Singleton's waterline is located there, and clarified that the strip of land is 12 feet wide. Mr. Aram stated that his driveway is located on Mr. Singleton's lot, and that even though both have known about it for many years, they are finally looking to clear the issue up so Mr. Aram's driveway is on his property. Mr. Bonesteel discussed the lot line configuration. The Planning Board had no further questions or comments. Member Stancliffe made a motion for a negative declaration on the project, which was seconded by Member Henderson. The Planning Board voted unanimously to adopt a negative declaration on the project under SEQRA. Member Henderson made a motion to approve the waiver of subdivision, which was seconded by Member Tarbox. The Planning Board voted unanimously to approve the waiver of subdivision.

Two items of new business were discussed.

The first item of new business was a waiver of subdivision application submitted by Todd McClurg for property located at 206 South Road. Mr. Golden reviewed the application for the

Planning Board, stating that the proposal is to subdivide 2.183 acres from the adjacent property owned by Frank Estabrooks, and transfer it to Mr. McClurg. This matter is placed on the December 2 agenda for further deliberation.

The second item of new business was a site plan and special use permit application submitted by Tilson Technology Management, Inc. for property located at 308 Brick Church Road. Mr. Golden reviewed the application for the Planning Board, stating that the applicant is proposing to add one carrier to the existing cell antennae array at the Gilead Lutheran Church. This matter is placed on the November 18 agenda for further deliberation.

The index for the November 4, 2021 regular meeting is as follows:

1. Froio – special use permit (November 18, 2021).
2. Matopato, LLC – site plan and minor subdivision (December 2, 2021).
3. Leon – site plan amendment (November 18, 2021).
4. Plumb – waiver of subdivision (November 18, 2021).
5. Singleton – waiver of subdivision (approved).
6. McClurg – waiver of subdivision (December 2, 2021).
7. Tilson Technology – special use permit and site plan (November 18, 2021).

The proposed agenda for the November 18, 2021 regular meeting is currently as follows:

1. Dzembo – special use permit (public hearing to commence at 7:00pm).
2. Barry – minor subdivision.
3. Gallivan – minor subdivision.
4. Froio – special use permit.
5. Leon – site plan amendment.
6. Plumb – waiver of subdivision.

7. Tilson Technology – special use permit and site plan.

Agenda items for the December 2, 2021 regular meeting currently include:

1. Matopato, LLC – minor subdivision.

2. McClurg – waiver of subdivision.