

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 SEPTEMBER 13, 2021

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, PATRICIA CURRAN, ADRIAN MORIN, and JOHN MAINELLO III.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

The draft minutes of the August 16, 2021 regular meeting were reviewed. There were no edits or corrections to be made. Chairperson Clemente made a motion to approve the minutes of the August 16, 2021 regular meeting without correction, which motion was seconded by Member Curran. The motion was unanimously approved, and the minutes of the August 16, 2021 regular meeting were approved.

The first item of business on the agenda was an application for three area variances submitted by Richard Wark Jr. for property located at 113 Flower Road. The applicant seeks to build a 24-foot above-ground pool and a deck surrounding said pool. Richard Wark Jr. was present to review the project. Mr. Wark stated that the pool is proposed to be built at the most level area of his property in order to reduce fill and that the deck will be off his house. Chairperson Clemente asked Mr. Wark if he had made any changes to the application since the last Zoning Board meeting and he said he had not. The Notice of Public Hearing was read into the record by Attorney Gilchrist, noting that the Public Hearing Notice was published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente opened the public hearing on the application. Chairperson Clemente stated that the Town had received two emails from neighbors

concerning the project, both of which were in favor of it. There was no one present at the public hearing seeking to provide public comment on the application. Chairperson Clemente made a motion to close the public hearing, which was seconded by Member Curran. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated that this was a Type II action under SEQRA, which does not require any further SEQRA review. The Zoning Board then reviewed the elements for consideration on the area variance application. As to whether the requested variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairperson Clemente stated that it would not as Mr. Wark's property is surrounded by farmland and much of it is hidden by vegetation. Member Morin stated that the pool being 37 feet away from the road is a safe distance. As to whether a feasible alternative is available, Member Curran stated that Mr. Wark already explained that the proposed location is the only feasible location due to the topography of the property, which includes a nearby leachfield. As to whether the requested variance is substantial, Chairperson Clemente stated that it is not due to the surrounding area being farmland. Member Curran agreed due to Mr. Wark having few neighbors, which means little traffic on the surrounding public roads. As to whether the variance would create an adverse environmental or physical impact, Member Morin stated that there would be no impacts at all to Mr. Wark's neighbors since the surrounding area is mostly farmland. Member Morin also stated that there will be no environmental impacts from the project and reiterated that the pool will be a safe distance from the road. As to whether the difficulty giving rise to the need for the variance is self-created, Member Mainello stated that it is because he is building a pool, but that the pool will be located on the only available space on the lot due to the property's topography, and that there will be no adverse visual or environmental impacts. Chairperson Clemente also noted that requiring variances on the front and left side of the

property, as well as having a secondary structure in front of a primary structure, provides a sort of balance to the parcel. Member Curran made a motion to grant all three area variances, which was seconded by Member Morin. The motion was unanimously approved and the three area variances were granted. Chairperson Clemente directed the applicant to continue to coordinate with the Town Building Department on this matter.

The second item of business on the agenda was an application for four area variances submitted by Dave Davey for property located at 11 Cleminshaw Avenue. The applicant seeks to build a 30-foot by 36-foot 3-car garage with a 10-foot by 10-foot mudroom attached to the house. Dave Davey was present to review the project. Mr. Davey stated that the property is an existing nonconforming residence in an R-9 residential district and reviewed the four area variances that were applied for. Chairperson Clemente asked Mr. Davey if he had made any changes to the application since the last Zoning Board meeting and he said he had not. The Notice of Public Hearing was read into the record by Attorney Gilchrist, noting that the Public Hearing Notice was published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente opened the public hearing on the application. There were no public comments on the application. Chairperson Clemente asked Mr. Golden if the Town had received any written comments on the application, either by letter or email, and he said that it had not. Chairperson Clemente asked if the maple tree on the property was going to be removed. Mr. Davey confirmed that it was in order to build a driveway. Chairperson Clemente made a motion to close the public hearing, which was seconded by Member Mainello. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated that this was a Type II action under SEQRA, which does not require any further SEQRA review. The Zoning Board then reviewed the elements for

consideration on the area variance application. As to whether the requested variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Morin stated that no negative comments from the public suggested it would not. Chairperson Clemente stated that there are other properties in the area that have garages and sheds, and Member Morin also stated that a garage would make the neighborhood safer since it would take cars off the road, which is narrow in that neighborhood. As to whether a feasible alternative is available, Member Mainello stated that there is not due to the size and shape of the lot. As to whether the requested variance is substantial, Mr. Golden explained that the fence on the property is not the edge of the right-of-way, that there is a 50-foot right-of-way for Rockwood Road, which is very narrow as Member Morin stated earlier. Mr. Golden stated that given the site, including road right-of-ways, the variances should not be deemed substantial. Member Morin also stated that the garage would result in fewer cars parked on the street, which would not just be beneficial due to the narrow road, but also for snow plowing during the winter. As to whether the variance would create an adverse environmental or physical impact, Chairperson Clemente stated that it would not create any environmental impacts post-construction. Member Morin asked Mr. Davey if the garage would only be residential and would not be rented out, possibly as an accessory apartment. Mr. Davey confirmed that only residents of the house on the property would use the garage to store cars, and that a primary purpose of the garage would be to get their cars off the street. As to whether the difficulty giving rise to the need for the variance is self-created, Chairperson Clemente stated that the lot has limitations due its location, the fact that it is a corner lot, as well as the width of the road right-of-ways, therefore it is not self-created. Chairperson Clemente also noted that requiring variances on the front, side, and rear of the property provides a sort of balance to the property. Member Curran made a motion to grant all three area variances,

which was seconded by Member Morin. The motion was unanimously approved and the three area variances were granted. Chairperson Clemente directed the applicant to continue to coordinate with the Town Building Department on this matter.

The third item of business on the agenda was an area variance application submitted by Lord Avenue Property, LLC for property located on Lord Avenue. Walter Lippmann, Project Manager with M.J. Engineering and Land Surveying, P.C., was present for the applicant. Mr. Lippmann stated that he was at the Planning Board's last meeting on September 2, where the project's Environmental Assessment Form (EAF) was reviewed and the Planning Board declared a negative declaration on the project, which means that the Zoning Board of Appeals could act on the area variance for the light poles at the present meeting. Mr. Lippmann stated that the Zoning Board requested additional visual renderings of 15-foot and 21-foot-tall light poles from neighboring properties at its last meeting on August 16, which were prepared by the applicant and submitted to the Zoning Board by letter dated August 25. Mr. Lippmann stated that the Hannaford supermarket will have operating hours of 6:00am to 11:00pm, with a majority of perimeter lights turning off at closing, and just 1-2 lights staying on for stocking and cleaning. Mr. Lippmann stated that the site is recessed from the topography of the surrounding neighbors, then reviewed various heights and stated that the height of the light poles will be under 15-feet tall from a visual standpoint from the surrounding neighborhoods. Mr. Lippmann stated that all light poles at the rear of the project site have been eliminated in the most recent plans. Member Morin asked how eliminating these lights would affect safety on the site. Mr. Lippmann stated that there would still be wall packs on the back of the building, as well as both sides, for safety. Member Morin asked if wall packs were included when analyzing light spillage on the site. Mr. Lippmann confirmed that they were. Mr. Lippmann then listed off other businesses on Hoosick Road that that had light

poles taller than what is allowed under the Zoning Code, including Price Chopper (30 feet), Rensselaer Honda (30 feet), and Walmart (40 feet). Mr. Lippmann also noted that the height of the light poles at Brunswick Town Hall was 20 feet. Member Morin stated that the Zoning Board had requested real-time photo renderings of the site at its last meeting and what the applicant submitted to the Board was not responsive to that request in his opinion. Mr. Lippmann stated that the submitted renderings were intended to show the light pole layout and if there would be any real difference in light poles that were 15 feet and 21 feet tall. Member Schmidt stated that he was also disappointed in the renderings as they were not what the Zoning Board asked for, and that he wanted to see what the site would look like with houses and trees in the background. Member Mainello stated that he also wanted to see what the site would look like with houses and vegetation in the background, which could have been gathered by photographs taken via drone, as other applicants had done in the past. The Zoning Board members agreed that they wanted to know what the neighbors would see, including trees, vegetation, and other houses in the renderings. Chairperson Clemente stated that there was a clear disconnect between what the Zoning Board wants to see and what was submitted. Mr. Lippmann stated that he was disappointed that this was not clear at the previous Zoning Board meeting on August 16, and that it had been his understanding at that meeting that the Zoning Board wanted merely to see the difference between the 15-foot and 21-foot light poles. Member Mainello noted that the renderings submitted did accurately show how the project site would look from one side of Lord Avenue, where there is little to no vegetation and only one row of houses, but that the renderings did not accurately show what the site would look like from Otsego Avenue. Mr. Lippmann stated that the vantage point from a backyard on Otsego Avenue was used for the renderings submitted, but the Zoning Board again stated that without vegetation and other houses in the background, the renderings could not

accurately show what people living on Otsego Avenue would see. Member Morin asked if a privacy fence would be built to block the supermarket from those living on Otsego Avenue. Mr. Lippmann stated that the applicant will be adding some vegetation to the existing vegetation to do so, but that ultimately it will be difficult to block a supermarket entirely from the neighbors. Member Morin noted the number of poles required at 15 feet and 21 feet, and that while he is in favor of fewer light poles on the site, he also wants to make sure the residents of neighborhoods surrounding the site are not impacted. Member Morin also noted that the photometrics submitted show that there will be no light spillage. Member Mainello noted that the fixtures used in the poles are different for 15-foot and 21-foot poles and that he was concerned about the brightness resulting from using the higher wattage light bulbs in the 15-foot poles. Member Mainello also stated that he wanted to verify that the wattage would not make a significant difference in terms of the impact to the local neighborhoods. Chairperson Clemente asked the other Zoning Board members if there was adequate information before them to make a decision on the area variance. Member Schmidt reiterated that he was not happy with the renderings submitted by the applicant. Member Mainello agreed, but noted that it would be hard to visualize the site from the Otsego Avenue neighborhood as some properties have trees and vegetation, while others do not and therefore have a clear view of the site. This would be difficult to accurately show by the renderings submitted. Chairperson Clemente again asked if the Zoning Board had enough information to make a decision, or if the Zoning Board members wanted more information. Member Mainello stated that he was okay with the submitted renderings as he was familiar with the area and could visualize the impacts on his own. The Planning Board discussed the two different lighting plans that have been submitted to the Board, one proposing 15 total poles, all 21-feet tall, and the more recent proposing 27 total poles, with a mix of 21-foot and 15-foot poles. Mr. Lippmann stated that a variance would be

required for both since prohibited 21-foot poles are proposed in both plans. Member Schmidt asked if the 21-foot poles would meet Hannaford's lighting standards and Mr. Lippmann confirmed they would. Mr. Lippmann asked the Zoning Board if they were aware why the allowable height of light poles was changed in the 2017 update of the Brunswick Zoning Code, as he was unable to determine so. Attorney Gilchrist stated that he was also unsure, but that issues regarding the height of light poles rarely came up before the Zoning Code update in 2017. Member Mainello stated that he was concerned over how close light were proposed to be to the site's property line and the neighboring residential zone, and that Price Chopper and Walmart were not as close to neighboring residences when they were approved. Member Mainello stated that the newest lighting plan had eliminated the 3 poles closest to the property line, that the rest of the light poles were to be buffered, and that the light poles closest to Otsego Avenue would be 15 feet tall, and that he wanted to keep the light poles closest to Otsego at 15 feet tall. Mr. Lippmann stated that requiring 15-foot poles at the entire site would increase the number of light poles needed. Member Mainello noted that the most recent plan called for 21-foot poles in the parking lot area, 15-foot poles along the perimeter of the site, and wall packs along the back and sides of the building, which would also be 15 feet high. Chairperson Clemente noted the uniqueness of the property with its residential setting next door, while stating that Rensselaer Honda has no neighbors around, and that that Walmart and Price Chopper were Planned Development Districts, so they cannot be directly compared to this project. Member Morin noted that Price Chopper constructed a privacy fence/wall and that Walmart had built a fence around the back of its building, both to block the building from nearby neighbors, and that backyards of properties on Otsego Avenue can be seen from Lord Avenue, meaning that people living on Otsego will be able to see the supermarket from their backyards. Chairperson Clemente stated that from certain angles, the light poles will appear to be higher than

the building even though their actual height will be lower than the building's height, and that it will be important for the Zoning Board to consider angles and perspective when making a determination on the light poles. Member Morin again stated that the applicant should have done a better job providing a visual rendering from Otsego Avenue. Chairperson Clemente asked if the record on the project was complete. Attorney Gilchrist reviewed the procedural status, stating that a public hearing had been held, the applicant had responded to comments, a rendering had been submitted, a Rensselaer County referral had been received, and that the Planning Board had made a Negative Declaration under SEQRA. Member Mainello asked if it would be possible to request more information from the applicant and hold a special meeting to make a determination on the area variance. Mr. Lippmann noted that the current plans call for a hybrid of 21-foot and 15-foot poles, with 15-foot poles at the perimeter of the site, and asked if the Zoning Board's primary concern was over light spillage, as the photometrics show that there will be no light spillage. Member Mainello stated that the concern was not with light spillage, but with overall visual impact, and Mr. Lippmann stated that the applicant could add more vegetation if the Zoning Board requested it. Member Morin stated that he was in favor of anything to reduce the impact of lights on surrounding properties, such as turning off the lights when the store closes or the building of a fence or wall. Chairperson Clemente noted that the suggestions of the Zoning Board could be included as conditions to the variance on whichever of the two lighting plans were voted on. The Zoning Board then deliberated on different pole height scenarios. Member Morin asked if the applicant would consider offering the privacy fence option to individual lot owners for their specific lot. The Zoning Board further deliberated on the visual impacts from Otsego Avenue and Lord Avenue of the different lighting plans. Attorney Gilchrist also clarified that this is not an issue of whether light poles will be on the site, as light poles will be required if the project moves

forward, but an issue of light poles at different heights, and that the Zoning Board must solely consider the difference in height between 15-foot and 21-foot light poles. Chairperson Clemente asked the other Zoning Board members if they would like to schedule a special meeting with the Planning Board to discuss all applications in front of both Boards simultaneously, and the other members said they would. Chairperson Clemente made a motion to schedule a joint special meeting with the Planning Board for Thursday, September 23, 2021 at 7:00pm, which was seconded by Member Mainello. The motion was unanimously approved and a joint special meeting with the Planning Board was scheduled for Thursday, September 23, 2021 at 7:00pm.

The fourth item of business on the agenda was an application for sign variances submitted by Action Sign Company, LLC on behalf of KFC for property located on Hoosick Road. Ken Shaw was present to review the application. Mr. Golden briefly reviewed a spreadsheet he had put together listing all the sign variances and the sizes of the signs being proposed. The Zoning Board discussed the signs being proposed, including which signs were considered advertising and which were not. Mr. Golden concluded that the total square frontage of the signs was less than 300 square feet. Mr. Golden stated that the Town would require the 9-1-1 number and information to be visible on the monument sign and Mr. Shaw confirmed that it would be done. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for October 18, 2021 at 6:00pm.

Two items of new business were discussed. The first item of new business was an area variance application submitted by Elaine Young for property located at 580 Pinewoods Avenue. Elaine Young and Paul Bulson were present to review the application. Mr. Bulson stated that he inherited tools and a truck from his recently deceased father's estate, and that he wants to build a garage to store them. Mr. Bulson stated that he cannot meet the 15-foot side setback due to the

location of a septic system on the property, which he identified for the Zoning Board on a map submitted with the application. Mr. Bulson also stated that his adjacent neighbor, who was present, had no objection to the building of the garage. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for October 18, 2021 at 6:15pm.

The second item of new business was a sign variance application submitted by Larry Schepici for property located at 677 Hoosick Road. Karen Schepici was present to review the application. Mrs. Schepici stated that her husband owns and operates a restaurant in the building and is looking to place signs on the side of the building to replace banners currently hanging there in order to increase business. Mrs. Schepici stated that there is already a sign in the parking lot, which they will keep in place, but that it is not very visible and they hope the signs on the building itself will increase visibility for the restaurant. Mrs. Schepici stated that she and her husband need the sign variance for the total number of signs on the property and for having a sign on the side of the building instead of at the front. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for October 18, 2021 at 6:30pm.

The index for the September 13, 2021 meeting is as follows:

1. Wark – area variances (approved).
2. Davey – area variances (approved).
3. Lord Avenue Property, LLC – area variance (September 23, 2021).
4. Action Sign Company, LLC – sign variances (October 18, 2021).
5. Young – area variance (October 18, 2021).
6. Schepici – sign variance (October 18, 2021).

The proposed agenda for the September 23, 2021 special meeting is as follows:

1. Lord Avenue Property, LLC – area variance.

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

1. Action Sign Company, LLC – sign variances (public hearing to commence at 6:00pm).
2. Young – area variance (public hearing to commence at 6:15pm).
3. Schepici – sign variance (public hearing to commence at 6:30pm).