

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 DECEMBER 19, 2022

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

ABSENT was DARYL LOCKROW.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairperson Clemente reviewed the agenda for the meeting, as posted on the Town sign board and Town website. The draft minutes of the November 21, 2022 regular meeting were reviewed. There were no edits or corrections to be made. Chairperson Clemente made a motion to approve the minutes of the November 21, 2022 regular meeting without correction, which motion was seconded by Member Curran. The motion was unanimously approved, and the minutes of the November 21, 2022 regular meeting were approved.

The first item of business on the agenda was an area variance application submitted by Rhonda Parker for property located at 836 Tamarac Road. Rhonda Parker was present to review the application. Chairperson Clemente stated that the applicant is proposing to construct a 54-foot by 72-foot pole barn on her property, which is a 7.82-acre parcel, and that the applicant is seeking the area variance for the size of the accessory structure, as the Brunswick Zoning Law allows a maximum of 1,500 square feet for accessory structures and the pole barn is proposed to be 3,888 square feet. The Notice of Public Hearing was read into the record by Attorney Gilchrist, noting that the Public Hearing Notice was published in the Eastwick Press, placed on the Town sign

board, posted on the Town website, and mailed to the 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 there had been any written comments on the application and he stated that there had been none, either by written letter or email. Chairperson Clemente asked the other Zoning Board members if there were any questions or comments on the application and there were none. 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 noted that the Town had received a letter from the Rensselaer County Bureau of Economic Development and Planning stating that the project will not have a major impact on County plans and that local consideration shall prevail. Chairperson Clemente stated that the project is 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 there were several other houses in the neighborhood with accessory structures, and that this proposed accessory structure would be out of sight from adjacent properties. Member Schmidt agreed, stating that the parcel is a wooded area, which would help screen the barn from neighboring properties. As to whether a feasible alternative is available, Member Curran stated that the barn is needed to store equipment, and the barn needs to be much larger than the maximum allowable size due to the amount of equipment that needed to be stored. As to whether the requested variance is substantial, Chairperson Clemente reiterated that the maximum allowable size of an accessory structure is 1,500 square feet and the applicant was requesting a structure that was 3,888 square feet. Chairperson Clemente also stated that the

structure was to be one-story, so there was no variance required for the height of the structure, only for the size. Chairperson Clemente stated that the size of the parcel, which was 7.82 acres, relative to the size of the accessory structure was relevant to this factor and it is reasonable to find that, in this case, the variance is not substantial. As to whether the variance would create an adverse environmental or physical impact, Member Mainello agreed with Chairperson Clemente in that the size of the structure was not substantial compared to the size of the parcel, and that there would be no adverse environmental impacts. Chairperson Clemente stated that the structure would not result in any visual, drainage or traffic impacts, or any impacts to emergency services. As to whether the difficulty giving rise to the need for the variance is self-created, Member Mainello stated that it was, but that it was not determinative in this case. Member Curran made a motion to grant the area variance, which was seconded by Member Schmidt. The motion was unanimously approved and the area variance was 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 a sign variance application submitted by AJ Signs for property located at 664 Hoosick Road. Tom Wheeler of AJ Signs was present to review the application. Chairperson Clemente noted that the applicant was proposing seven total signs for a Wendy's restaurant at the project site; that the Brunswick Zoning Law allows two signs; that two signs, on the front of the building and a pylon sign, had already been approved; and that the variance is for five additional signs and the location of two of those five signs, which were proposed for the side of the building. Chairperson Clemente asked Mr. Wheeler if there had been any changes to the application since the last Zoning Board meeting. Mr. Wheeler stated that there had been no changes to the application. The Notice of Public Hearing was read into the record by Attorney Gilchrist, noting that the Public Hearing Notice was published in the Eastwick Press,

placed on the Town sign board, posted on the Town website, and mailed to the 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 there had been any written comments on the application and he stated that there had been none, either by written letter or email. Chairperson Clemente noted that the Town had received a letter from the Rensselaer County Bureau of Economic Development and Planning stating that the project will not have a major impact on County plans and that local consideration shall prevail. Chairperson Clemente asked what the hours of operation would be for the Wendy's restaurant and the illuminated sign in front of the building. Mr. Wheeler stated that he was not sure of the hours of operation, but that the sign would be illuminated only when the restaurant was open, and turned off when the restaurant closed. There were no further questions from the Zoning Board. 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 the project is subject to review under SEQRA, which requires an Environmental Assessment Form (EAF) to be submitted by the applicant, which had been done. The Zoning Board reviewed the project's EAF and concluded that there would be no adverse environmental impacts. Chairperson Clemente made a motion for a negative declaration under SEQRA, which was seconded by Member Curran. The Zoning Board voted unanimously to declare a negative declaration on the project under SEQRA. 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 Curran stated that the proposed signage was consistent with other businesses in the area, and that those businesses have similar building

structures as the Wendy's restaurant. As to whether a feasible alternative is available, Member Mainello stated that a feasible alternative was not available as the signs need to be visible and located close to the Wendy's restaurant, and many of the signs are directional signs. As to whether the requested variance is substantial, Chairperson Clemente stated that it was not due to some of the signs being directional and for safety, and will not be visible from Hoosick Road. As to whether the variance would create an adverse environmental or physical impact, Member Curran stated that there would be no impacts to water, air, or soil on the project site, and that there would be no environmental impacts at all. As to whether the difficulty giving rise to the need for the variance is self-created, Chairperson Clemente stated that it might not be due to the applicant being constrained by brand and franchise requirements of Wendy's restaurants. Attorney Gilchrist stated that a condition for the Zoning Board to consider was that no signs can be illuminated when the business is not in operation. Member Curran made a motion to grant the sign variance for five additional signs and for the location of two of those additional signs on the side of the building subject to the stated condition, which was seconded by Member Mainello. The motion was unanimously approved and the sign variance was granted subject to the stated condition. 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 appeal submitted by Charles Bulson for property located at 63 Indian Creek Lane. Attorney Gilchrist recused himself due to having worked with the Brunswick Building Department previously on the matter. Chairperson Clemente introduced Christopher Langlois, Esq., who will serve as special counsel to the Zoning Board for the appeal. Mr. Langlois joined the Zoning Board members and stated that he would serve as special counsel for the Zoning Board on the appeal. Mr. Langlois stated that he had reviewed the

appeal dated November 7, 2022 and all supporting documents submitted by the appellant. Mr. Langlois stated that the initial consideration is whether the appeal is properly before the Zoning Board, as the Zoning Board has limited jurisdiction. Mr. Langlois stated that the Zoning Board could only hear appeals from an order or determination of the Code Enforcement Officer, and also that the Zoning Board could only consider the appeal if it had been filed timely. Mr. Langlois stated that the current appeal was unusual in its history, and reviewed the history of the matter as presented in the appeal. Mr. Langlois stated that the appeal asserts that on March 9, 2021, the Town Code Enforcement Officer had filed a Stop Work Order, that the Order required the property owner to apply for a building permit, and stated that a variance for an accessory structure is required. Mr. Langlois stated that on March 11, 2022, the applicant filed a new building permit application, but that no determination was made on the second building permit application by the Building Department. The appellant asserts that the new building permit application was therefore deemed denied, and that this denial is what is being appealed. Mr. Langlois stated that the applicant is challenging the requirement for a variance for his accessory structure, as he is arguing that the accessory structure is to be used for agricultural purposes and should not require a variance. Mr. Langlois stated that there were two issues currently facing the Zoning Board: first, whether or not there was a specific determination or order by the Code Enforcement Officer on the March 2022 application, with Mr. Bulson taking the position that the lack of determination constitutes a constructive denial, and second, if the appeal has been filed and received timely. Mr. Langlois stated that if the Zoning Board determines that the appeal is properly before the Board, then a public hearing on the appeal can be scheduled. Mr. Langlois stated that he had spoken with Mr. Bulson's attorney, Robert Tietjen, prior to the current meeting and established that Mr. Bulson would be allowed to submit responses to these two issues raised. Mr. Langlois asked what the date

of the next Zoning Board meeting was and Mr. Golden stated that the next meeting would be January 23, 2023. Chairperson Clemente noted that Zoning Board meetings are usually held the third Monday of every month, but was pushed back a week due to the Martin Luther King Jr. holiday. Mr. Langlois asked if the applicant would be able to provide written responses to the two issues by January 16, 2023. Mr. Tietjen asked what the latest date was for responses to be submitted. Mr. Golden stated that he distributes materials to Zoning Board members the Thursday before every meeting, so January 19, 2023 would be the last possible date. Mr. Golden also stated that the next Zoning Board meeting after January would be February 27, so the responses for the February meeting would need to be in by February 23. Mr. Tietjen asked if he could review the scheduling of submitting the responses with Mr. Langlois and the Zoning Board confirmed he could. Mr. Langlois stated that the Zoning Board would have 62 days from the acceptance of the appeal to schedule a public hearing, and since the Zoning Board was waiting on the applicant's responses, the appeal had not yet been deemed complete and the 62-day period had not yet begun. Mr. Langlois asked the Zoning Board if they had any questions for him. Member Mainello asked if the Zoning Board could request information on what agricultural uses the applicant was planning to do on the project site. Mr. Langlois stated that the uses on the site spoke to the substance of the appeal itself, not whether or not it was procedurally complete, and the Zoning Board could request that information in the event the appeal was determined to be complete and was properly before the Zoning Board. Mr. Tietjen stated that he would discuss when to submit responses to the Zoning Board with both his client and Mr. Langlois.

There was no new business to discuss.

The index for the December 19, 2022 regular meeting is as follows:

1. Parker – area variance (approved).
2. AJ Signs – sign variance (approved with condition).
3. Bulson – appeal (January 23, 2023).

The proposed agenda for the January 23, 2023 regular meeting is currently as follows:

1. Bulson – appeal.