

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 JULY 17, 2023

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, PATRICIA CURRAN, JOHN MAINELLO III and 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. Chairperson Clemente noted that the third item on the agenda, an application for area variances submitted by Peter Grande, had been tabled prior to the meeting and was placed on the agenda for the August 21, 2023 meeting.

The draft minutes of the June 19, 2023 regular meeting were reviewed. Chairperson Clemente noted one correction: on page 3, paragraph 2, line 2, “or” should be changed to “for.” Chairperson Clemente made a motion to approve the minutes of the June 19, 2023 regular meeting subject to the noted correction, which was seconded by Member Curran. The motion was unanimously approved, and the minutes of the June 19, 2023 regular meeting were approved subject to the noted correction.

The first item of business on the agenda was an application for sign variances submitted by Matthew Signs, LLC for property located at 4005 NYS Route 2. A representative from Matthew Signs, LLC was present to review the application. Chairperson Clemente stated that the applicant was seeking three variances: for the total number of signs on the site, for the total square footage of the signs on the site, and for the height of a fuel price sign on the site. 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 asked the representative if there had been any changes made to the application since the last Zoning Board meeting. The representative stated that there had been no changes made to the application, then asked Mr. Golden if he had reviewed other gas stations in the area. Mr. Golden stated that he had reviewed other gas stations in the area and that the signage proposed by the applicant was similar or less than what nearby gas stations currently have. 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 stated that on the issue of other gas stations in the area, the Building Department did review other gas stations and determined that many were over the maximum number of signs allowed under the Town Zoning Law; however, the issue of compliance of other locations is within the jurisdiction of the Building Department, and the Zoning Board jurisdiction was limited to the review of appeals from Building Department determinations and variance applications. 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 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 also noted that a short Environmental Assessment Form (EAF) was submitted by the applicant, which must be reviewed to determine the environmental

significance of the project. Chairperson Clemente stated that there was no potential significant adverse environmental impact from the project and made a motion for a negative declaration on the project under SEQRA, which was seconded by Member Curran. The Zoning Board voted unanimously to declare a negative declaration on the project under SEQRA. Attorney Gilchrist stated that the site for which the signs were being sought was unique, and that even though other gas stations in the area were examined by Mr. Golden, the Zoning Board must only consider this site. Attorney Gilchrist reiterated that the Zoning Board's determination would be limited to this particular site. The Zoning Board then reviewed the elements for consideration on the application for sign variances. As to whether the requested variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Lockrow stated that the gas station and convenience store on the property already exists and that the applicant is only seeking variances for signs. Member Curran asked if that was accurate, and asked specifically about the prior signage on the site. Member Lockrow confirmed that the gas station and convenience store have been on the site for many years. Chairperson Clemente clarified that the applicant was proposing 30 total signs, that 4 signs for a gas station use were allowed on the site, and that the variance currently before the Zoning Board was for 26 signs. Member Lockrow stated that the site is across the street from the Tamarac school and asked if there were any rules in the Town Zoning Law about signs being near a school building, specifically regarding signs advertising tobacco products. Mr. Golden stated that no signs advertising tobacco were being proposed, and that there were no rules in the Zoning Law about the orientation of signs facing schools. Member Lockrow asked if there were any rules about what a sign can say in relation to the proximity to a school building. Mr. Golden stated that there were no rules regarding that issue in the Brunswick Zoning Law. The representative for the applicant stated that the applicant was

only seeking variances for signs advertising “Sunoco,” not any other signs, and that the signs being sought would only be on the gas pumps, canopy, and a pole. Attorney Gilchrist asked if the applicant was only seeking variances for Sunoco signs or for every sign on the property. Mr. Golden stated that he had made a list of every sign on the property, which he then provided to the Zoning Board members. The representative reiterated that the applicant was only seeking variances for signs for Sunoco. Attorney Gilchrist asked if signs advertising food were included in the materials given to the Zoning Board members, or just signs for fuel. Mr. Golden stated that all signs on the site were included. Attorney Gilchrist clarified the extent of the application, stating that the Zoning Board was not looking at the total sign compliance on the site, as that was a Building Department issue, but rather the variance only for the signs being sought by the applicant. Attorney Gilchrist further clarified that the applicant was seeking variances for the total number of Sunoco signs on the site, for the total square footage of the Sunoco signs on the site, and height of a fuel price sign. The Zoning Board reviewed the number of signs sought in the variance application, noting that four signs were currently allowed on the site, that 30 signs were being requested, and that the variance was therefore for 26 signs. The representative stated that there were four Sunoco stickers placed on each gas pump. As there were four gas pumps, that added up to 16 signs. The representative stated that there were eight additional signs for the price of fuel to be placed on the gas pumps, and that there were two additional signs, which resulted in 26 total Sunoco signs on the site. Mr. Golden stated that the current Brunswick Sign Law is not up to date with the current gas station requirements, and the Town should consider updating the law. Chairperson Clemente asked Member Lockrow if his concern over the character of the neighborhood had been addressed, and he stated that it had been. The Zoning Board then returned to the elements for consideration on the application. As to whether a feasible alternative is

available, Member Curran stated that it was not as the signage requested was the required branding for a Sunoco franchise. As to whether the requested variances were substantial, Chairperson Clemente stated that the applicant was seeking a variance for 26 signs where the maximum allowed under the Brunswick Sign Law was four signs, that the applicant was seeking 369.6 square feet of signage where a maximum of 300 square feet was allowed, and that the applicant was seeking a fuel price sign that would be 15 feet high where a maximum height of eight feet is allowed. Member Schmidt stated that 26 signs is substantial, but that many of them cannot be seen from the road, such as the 16 stickers on the fuel pumps. Member Mainello stated that the height of the fuel price sign is substantial, but that it does not create a safety hazard. As to whether the variance would create an adverse environmental or physical impact, Chairperson Clemente asked if any of the signs would be illuminated. The representative stated that three signs would be illuminated: the “Sunoco” on the gas canopy, diesel canopy, and fuel price sign. Chairperson Clemente stated that the Zoning Board has previously required illuminated signs to be turned off at the close of business and overnight. As to whether the difficulty giving rise to the need for the variance is self-created, Member Mainello stated that it was, but that the specific signage requested was required as part of a Sunoco franchise package and that it was consistent with other gas stations. Chairperson Clemente stated that the illuminated signs being turned off at the close of business should be a condition to consider on the application, and asked if there were any other conditions that should be considered. Member Curran asked if anything was going to be hung off the fuel price sign. The representative stated that nothing was going to be hung off the fuel price sign. Member Curran made a motion to approve the sign variances for 26 additional signs on the site, for 369.6 square feet of signage on the site, and for the height of a fuel price sign of 15 feet, subject to the conditions that all illuminated signs be limited to business hours and be turned off at the

close of business and that nothing be hung from the fuel price sign, which was seconded by Member Lockrow. The motion was unanimously approved and the three sign variances were granted subject to the stated conditions. Chairperson Clemente directed the applicant to continue working with the Town Building Department on this matter.

The second item of business on the agenda was an application for area variances submitted by Mildred Fuller for property located at 6 Johnson Street. Mildred Fuller was present to review the application. Chairperson Clemente noted that the application was in connection with an application for a lot line adjustment currently pending before the Planning Board. 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 asked Mrs. Fuller if there had been any changes made to the application since the last Zoning Board meeting, and asked her to give a brief summary of the application. Mrs. Fuller stated that there had been no changes made to the application since the last meeting, and confirmed that the application was in connection with a lot line adjustment. Mrs. Fuller stated that when she and her husband purchased their property, she thought that the accessory structure, a garage, was part of the lot, that she and her family had used the garage for years, that her adjacent neighbor had a survey of her property prepared and discovered that part of the garage was on the neighbor's lot, that the neighbor is now selling her lot, and that both Mrs. Fuller and her neighbor want to get a lot line adjustment and transfer of title to the property on which the garage sits so that Mrs. Fuller and her husband own the entirety of the garage. 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. There were no questions or comments from the Zoning Board. Chairperson Clemente made a motion to close the public hearing, which was seconded by Member Lockrow. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated that the project was a Type II action under SEQRA, which does not require any further SEQRA review. Chairperson Clemente also 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. The Zoning Board then reviewed the elements for consideration on the area variances requested in the application. As to whether the requested variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Curran stated that the garage on the property was an existing structure, that the application was just a lot line adjustment with no construction proposed, so there would be change to the field conditions and no change to the rest of the neighborhood. As to whether a feasible alternative was available, Member Lockrow stated that there was no other viable option to address the existing issue of the garage sitting on two properties. As to whether the requested variances were substantial, Chairperson Clemente noted that a front yard setback of 5 feet was proposed where 70 feet of setback was required, and a side yard setback of 5 feet was proposed where 15 feet of setback was required, and that the applicant was also seeking to have an accessory structure in front of a primary structure. Chairperson Clemente stated that it was substantial, but that the application addressed an existing structure and was seeking to correct the lot line due to the updated survey. As to whether the variances would create an adverse environmental impact, Member Lockrow stated that it would not due to only being a lot line adjustment and there being no construction. As to whether the difficulty giving rise to the need for

the variances was self-created, Chairperson Clemente stated that the difficulty was self-created, but that it was not determinative in this case, particularly as this matter arose from an updated survey. Chairperson Clemente asked the Zoning Board members if there were any further questions or comments, and there were not. Member Schmidt made a motion to grant the three area variances, which was seconded by Member Mainello. The motion was unanimously approved and the three area variances were granted. Chairperson Clemente directed the applicant to continue working with the Town Building Department on this matter, and to continue the lot line adjustment review at the Planning Board.

Chairperson Clemente reiterated that the third item on the agenda, an application for area variances submitted by Peter Grande, had been tabled prior to the meeting and was placed on the agenda for the August 21, 2023 meeting.

The Zoning Board discussed two items of new business.

The first item of new business was an area variance application submitted by Maries Muse, LLC for property located at 727-737 Hoosick Road and 4 Mohawk Avenue. Tim Freitag, from Bohler Engineering; Paul Van Cott, an attorney from Whiteman Osterman & Hanna, LLP; and Colton Hill, the project developer, were present to review the application. Mr. Freitag gave an overview of the project, stating that the applicant was seeking to combine seven small parcels on the project site into two parcels, one 1.35-acre parcel and one 1.22-acre parcel. Mr. Freitag stated that a fourth leg is proposed to be added to the traffic light at the intersection of Hoosick Road and McChesney Avenue, with that fourth leg of the traffic light providing access to the east parcel. Mr. Freitag stated that the east parcel would have a 2,350 square foot quick-serve restaurant, focusing on mobile ordering, and a 3,500 square foot retail building. Mr. Freitag stated that the west parcel would have a 5,000 square foot quick-serve restaurant with a full drive-thru. Mr. Freitag stated

that the applicant was seeking variances for the size of an accessory structure, the setbacks for parking, and the number of signs on the site, with all three variances only required for the west parcel. Mr. Freitag described the drive-thru on the west parcel, stating that there would be a canopy at the order point and a canopy at the food pick-up point, and that there would be a third lane for traffic at the order point and only two lanes at the food pick-up point. Mr. Freitag stated that the site plan focused on traffic circulation and pedestrian safety and reviewed it for the Zoning Board. Mr. Freitag also discussed proposed upgrades to the traffic signal. Chairperson Clemente asked how the applicant would prohibit the drive-thru impacts to sit-down customers near the parking area. Mr. Freitag reviewed the site plan and traffic circulation, noting that the parking design was due to delivery truck circulation requirements. Member Mainello asked when deliveries would be made. Mr. Freitag stated that deliveries would be made during off-peak hours, usually at night. Mr. Freitag and the Zoning Board members then discussed other similar restaurants opening in the area and how they would compare to the proposed Brunswick location. Mr. Van Cott discussed the documents submitted with the application, noting an error on page 1 of a letter included with the submission, stating that the project site is not located in the General Business zoning district, but in a B-15 business district. Mr. Van Cott reviewed the Full Environmental Assessment Form (EAF), project narrative, site plan, signage plan, elevations of the buildings, photos of the canopies on the west parcel, and photos of the project site and surrounding area. Mr. Van Cott then reviewed the variances being sought by the applicant: the first variance was due to accessory structures not being allowed to exceed 1,500 square feet, and the two proposed canopies exceed that square footage; the second variance was for the setback of the parking area from residential properties to the rear of the parcel, which was on the north of the west parcel; and the third variance was for the total number of signs on the west parcel, with four wall signs, a logo sign, and three names of the

business written on the building, and also a pylon sign. Mr. Van Cott also noted that the sign variance was just for the total number of signs, not the square footage of the signs, and that the total square footage of the signs was in compliance with the Brunswick Sign Law. Chairperson Clemente asked if the canopies would qualify as an accessory structure under the Town Zoning Code. Mr. Golden confirmed that they would, and that a fourth variance would be required for having an accessory structure in front of the primary structure on the west parcel. Mr. Van Cott stated that he would submit an application for that additional variance. Chairperson Clemente discussed the parking layout for the northern portion of the restaurant on the west parcel and potential parking constraints that she could already identify. Mr. Freitag stated that cars may potentially need to cross a traffic lane based on the current design, and suggested that signage and striping could be added to the site mitigate that. Member Curran asked how cars backing up onto Hoosick Road would be avoided during peak hours. Mr. Freitag stated that it was examined in the traffic study included with the application, and that the Planning Board was also reviewing the traffic study and were in the process of seeking an independent traffic consultant to review the traffic study as well. Chairperson Clemente noted that two signs were allowed and four were requested. Mr. Van Cott stated that two building signs were allowed plus the pylon sign. Mr. Golden stated that he would review the total signs proposed and allowed on the building and pylon sign. Chairperson Clemente asked if an additional variance would be required for having a sign on the side of the building. Mr. Golden confirmed that the Brunswick Sign Law allowed only signs on the front of a building and that a variance would be required for two signs on the sides of the building and one sign on the back of the building. Chairperson Clemente asked if the menu board would count as a sign. Mr. Golden confirmed that it would and that the variance for the total number of signs on the site would need to be increased, and that the applicant would need to

recalculate the total square footage of the signs on the site to see if a variance would be required for that as well. Member Mainello asked if a direction sign, which also had a logo on it, would count as an additional sign. Mr. Golden confirmed that it would also count as a sign if it had the restaurant's logo on it. Chairperson Clemente asked if there were any possible alternatives for the canopies, and that the applicant would need to review possible alternatives and submit evidence as to why other options were not viable. Mr. Freitag stated that the site was designed primarily to address expected traffic circulation. Member Lockrow asked the applicant to review the exit and entrance to the site from Mohawk Avenue. Mr. Freitag stated that it was a secondary entrance/exit. Mr. Freitag also stated that in addition to the fourth leg being added to the traffic light at the Hoosick Road and McChesney Avenue intersection, the timing for the light would change as well. Chairperson Clemente asked about the monument sign and reader board display on it. Mr. Van Cott stated that while the words on the reader board would change, they would be changed by hand and that the reader board is not electronic. Chairperson Clemente asked if the 9-1-1 address could be added to the monument sign. Mr. Freitag confirmed that it would be added. Chairperson Clemente noted that the Full EAF stated that there was a private pond on the site and asked the applicant to review it. Mr. Freitag stated that a private pond being noted on the EAF was added through the use of the EAF Mapper, and that there is a small pond just off-site. Member Lockrow asked what the restaurant's hours would be. Mr. Freitag stated that the restaurant on the west parcel would be open 6:30 AM to 10:00 PM, Monday through Saturday, and closed on Sundays. Mr. Freitag also clarified that while he and Mr. Van Cott were discussing only the west parcel, the EAF covered both the east and west parcels. Chairperson Clemente asked about a "banner detail layout sign" described in the application. Mr. Freitag stated that it was a temporary sign that would only be used during construction. Mr. Freitag discussed procedure for working with the Planning Board,

specifically coordinating between both Boards, and undergoing a coordinated SEQRA review. The Zoning Board discussed coordinating with the Planning Board and agreed that if a joint public hearing on the applications before both Boards was requested by the Planning Board, then the Zoning Board would participate. Mr. Van Cott stated that he would submit the additional required information before the next Zoning Board meeting and coordinate with the Building Department. Chairperson Clemente stated that the Zoning Board would address further procedure after hearing from the Planning Board. This matter is placed on the August 21, 2023 agenda for further deliberation.

The second item of new business was an appeal submitted by Charles Bulson for property located at 63 Indian Creek Lane. Mark Miranda, the appellant's attorney, and Charles Bulson were present to review the appeal. Mr. Miranda stated that he was present on behalf of Robert Tietjen, Mr. Bulson's attorney, regarding the appeal, and that Mr. Tietjen had submitted a letter to the Zoning Board dated June 16 detailing a new appeal filed by Mr. Bulson. Mr. Miranda asked if a public hearing on the new appeal could be scheduled or if the matter could be placed on the agenda for the next Zoning Board meeting. Attorney Gilchrist stated that he had a conflict of interest as he had provided legal assistance to the Building Department previously on the matter, and advised the Zoning Board to seek outside counsel for legal advice on the appeal. Chairperson Clemente made a motion to retain outside counsel for legal advice on the appeal, which was seconded by Member Lockrow. The motion was unanimously approved. This matter is placed on the August 21, 2023 agenda for further deliberation.

The index for the July 17, 2023 regular meeting is as follows:

1. Matthew Signs, LLC – sign variances (approved with conditions).
2. Fuller – area variances (approved).
3. Maries Muse, LLC – area variance (August 21, 2023).
4. Bulson – appeal (August 21, 2023).

The proposed agenda for the August 21, 2023 regular meeting is as follows:

1. Grande – area variances.
2. Maries Muse, LLC – area variance.
3. Bulson – appeal.