

## **Zoning Board of Appeals**

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

### **MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD DECEMBER 17, 2018**

PRESENT were MARTIN STEINBACH, CHAIRMAN, ANN CLEMENTE, E. JOHN SCHMIDT, and WILLIAM SHOVER.

ABSENT was CANDACE SCLAFANI.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

The draft minutes of the November 19, 2018 meeting were reviewed. Upon motion of Member Clemente, seconded by Member Schmidt, the minutes of the November 19, 2018 meeting were unanimously approved without amendment.

The first item of business on the agenda was an area variance application submitted by George Macy for property located at 15 Russell Court. The applicant seeks an area variance for side yard setback requirements in connection with the construction of a two-story addition to an existing home on the property. George Macy was present on the application. Chairman Steinbach inquired whether there were any changes or additions to the application since the November 19 meeting. Mr. Macy confirmed there were no changes or additions to the application. The Zoning Board then opened a public hearing on the application. The notice of public hearing was read into the record, noting that the public hearing notice was 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. First, Chairman Steinbach inquired whether any members of the Zoning Board had questions concerning the application. Member Clemente wanted to confirm

that an existing addition that is located at this property would be removed, and the area variance request is in connection with a proposed new addition to be built in place of the existing addition. Mr. Macy confirmed this was accurate. Chairman Steinbach then opened the floor for receipt of public comments. James Mullahey, 9 Russell Court, stated that he was in favor of the Zoning Board granting the requested variance; that he has been a neighbor of Mr. Macy since the 1970s, and considers him to be a good neighbor; and that he is fully supportive of this current project. There were no further public comments. Member Shover made a motion to close the public hearing on the Macy area variance application, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing closed. The Zoning Board members stated they were ready to deliberate on the application. Attorney Gilchrist stated that the application seeks an area variance in connection with a single-family residence, and constitutes a Type 2 action under SEQRA. Attorney Gilchrist reviewed the standards for consideration of the area variance request by the Zoning Board members, and reviewed the factors for the Zoning Board members to consider in connection with the area variance request. The Zoning Board determined that the requested variance would not result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties; Member Clemente stated that the proposed addition requiring the side yard setback area variance is in keeping with the same building profile for the existing residential structure, and is consistent with other properties in the neighborhood; Chairman Steinbach concurred, stating that this proposal will fit into the general character of the neighborhood, and stated it was significant on this record that the only public comment was from a neighbor supporting the variance application. As to whether a feasible alternative exists other than the requested area variance, the Zoning Board members determined that a feasible alternative did not exist; Member Schmidt noted for the record that the existing

residential structure was already located within the required setback from the side yard lot line, constituting a nonconforming structure, and that the proposed addition should be consistent in terms of the building line with the existing residential structure. As to whether the requested area variance is substantial, the Zoning Board members determined that the request was not substantial; Member Clemente stated that the required 15-foot side yard setback will be substantially met, with a setback of 13.1 feet and a variance of 1.9 feet, and determined that this was a small variance from the area requirements; all member concurred. As to whether the requested variance would have an adverse effect on the physical or environmental conditions in the neighborhood, the Zoning Board members determined that no adverse effect would result; Member Clemente noted for the record that the removal of the existing addition and replacement with a new addition will enhance the physical condition of the neighborhood, including greater aesthetic appeal. As to whether the difficulty necessitating the area variance is self-created, the Zoning Board members did note that the necessity for the variance could be deemed to be self-created, but also noted for the record that the existing addition that will be replaced by the proposed new addition is in an unsafe condition and should be replaced, and in that regard, the Zoning Board could determine that the difficulty is not self-created but prompted by safety considerations. Based upon these factors and determinations, and in balancing the benefit to the applicant as opposed to any detriment to the neighborhood, Member Clemente made a motion to approve the requested side yard setback variance, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance granted. The applicant was directed to coordinate with the Brunswick Building Department on the removal and demolition of the existing addition and construction of the new addition at this property.

The next items of business on the agenda were area variance applications submitted by Mark and Clara Duncan for properties located at 38 Duncan Lane and 32 Duncan Lane. Mark and Clara Duncan were present on the application. Also present was Mark Danskin, land surveyor, representing the applicant. Mr. Danskin stated that there were no changes or additions to the area variance applications since the November 19 meeting. Mr. Danskin reiterated that the requested variances arise as a result of proposed lot line adjustments for these properties to come into compliance with minimum lot size for the Zoning District, and that no new structures or new construction is being proposed. The Zoning Board then opened the public hearing on the area variance application for 38 Duncan Lane, which seeks two area variances in connection with the lot line adjustments on the property; for an existing garage located 20 feet from the proposed rear lot line where the Brunswick Zoning Law requires a 25-foot rear yard setback; and for a deck located off of that garage that is located 9 feet from the proposed rear yard lot line where an accessory structure setback of 15 feet is required under the Brunswick Zoning Law. The notice of public hearing was read into the record, noting that the public hearing notice was 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. Chairman Steinbach opened the floor for the receipt of public comment. No members of the public wished to provide comment. Member Clemente then made a motion to close the public hearing, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed on this application. The Zoning Board members proceeded to deliberate on the requested variances. Attorney Gilchrist noted for the record that this application seeks an area variance in connection with single-family residential use, and constitutes a Type 2 action under SEQRA. Attorney Gilchrist reviewed the standards for consideration of the area variance requests, and the particular

factors to be considered by the Zoning Board members. As to whether the two requested area variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, the Zoning Board members determined that there would be no detriment to the area and no change to the character of the neighborhood; Member Clemente noted that this matter arises out of proposed property line adjustments only, with no new construction being proposed, and the character would not change in any way nor create any detriment to nearby properties; all members concurred. As to whether there was a feasible alternative available to the applicant other than the requested area variances, the Zoning Board members determined that there was no feasible alternative in connection with the proposed property line adjustments to increase this lot to meet minimum lot size for the Zoning District; Chairman Steinbach confirmed that this proposal was to clean up the property lines only, and that no feasible alternatives exist to setbacks of existing structures from those proposed lot lines that still meet the minimum lot size requirements under the Brunswick Zoning Law. As to whether the requested area variances are substantial, the Zoning Board members determined that based on the facts of this matter, the requested variances are not substantial; the Zoning Board members noted that both the garage and accessory deck are existing structures, that no new construction is being proposed, and that this arises merely as a result of proposed changes to lot lines. As to whether the requested area variances will have an adverse effect on the physical or environmental conditions in the neighborhood, Member Schmidt noted that there would be no changes to physical or environmental conditions as no new structures or construction is being proposed; all members concurred. As to whether the difficulty necessitating the area variances is self-created, Chairman Steinbach noted that the difficulty is self-created as a result of the proposed lot line changes, but that this would not have any impact on the application and this factor is not determinative based

on the facts of this application. Based upon consideration of these factors, and balancing the benefit to the applicant as opposed to any detriment to the neighborhood in particular or Town in general, Chairman Steinbach made a motion to approve the requested area variances for 38 Duncan Lane, conditioned on action by the Brunswick Planning Board in connection with the waiver of subdivision application for the proposed lot line adjustments. That motion was seconded by Member Clemente. The motion was unanimously approved, and the two area variances for 38 Duncan Lane were approved subject to the stated condition. The Zoning Board next considered the area variance application submitted by Mark and Clara Duncan for 32 Duncan Lane. Again, Mr. Danskin stated there were no changes or additions to this area variance application. The Zoning Board then opened a public hearing on this application, which seeks an area variance in connection with a proposed lot line adjustment for this property, as an existing deck will be located 5.1 feet from the proposed side yard lot line where the Brunswick Zoning law requires a 15-foot side yard setback. The notice of public hearing was read into the record, noting that the public hearing notice was 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. The Zoning Board opened the floor for receipt of public comment. No members of the public wished to comment. Member Shover then made a motion to close the public hearing, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing on this application was closed. The Zoning Board proceeded to deliberate on this area variance application. Attorney Gilchrist stated that the requested area variance is in connection with a single-family residence, and constitutes a Type 2 action under SEQRA. Attorney Gilchrist again reviewed the standards for consideration of the requested area variance. 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, the Zoning Board members determined there would not be any undesirable change in the character of the neighborhood or any detriment to nearby properties; Member Shover noted that the applicant is only trying to clean up property lines to come into compliance with minimum lot size for the Zoning District, and this would not result in any change to the character of the neighborhood; Chairman Steinbach also noted for the record that the properties in question and surrounding 32 Duncan Lane are all within the Duncan family. As to whether the applicant has a feasible alternative available other than the requested variance, the Zoning Board members all concurred that a feasible alternative is not available as the proposed lot line adjustments are being made to come into compliance with minimum lot size for the Zoning District, and that the structure requiring the setback variance is an existing structure with no new construction being proposed. As to whether the requested variance is substantial, the Zoning Board members noted that the required side yard setback is 15 feet under the Brunswick Zoning Law, but did note that the existing deck is currently located 6.3 feet from the current lot line, which will change to 5.1 feet from the proposed side yard lot line, and determined that this change was not substantial. As to whether the requested variance would result in any adverse effect on the physical or environmental condition of the neighborhood, all members concurred that no effect would result as no new construction is being proposed. As to whether the difficulty giving rise to the need for the area variance is self-created, the Zoning Board members determined that the difficulty is self-created but is being requested in connection with proposed lot line adjustments to come into compliance with minimum lot size for the Zoning District, and found that this factor was not determinative. Based upon consideration of these factors, Chairman Steinbach made a motion to approve the requested area variance, conditioned on Brunswick Planning Board action on the waiver of subdivision application for the proposed lot line

adjustments. Member Clemente seconded the motion subject to the stated condition. The motion was unanimously approved, and the area variance for 32 Duncan Lane was granted subject to the stated condition.

The next item of business on the agenda was a sign variance application submitted by Hospitality Syracuse Inc. for property located at 720 Hoosick Road. The applicant seeks sign variances in connection with the Taco Bell restaurant to be constructed in the Price Chopper Plaza at 720 Hoosick Road, and the variance request is for total number of signs on the site, approval of a free-standing monument sign, and total square footage of signage on the site. Tim Freitag, P.E., of Bohler Engineering, was present for the applicant. Also in attendance were Robert Osterhoudt, P.E., of Bohler Engineering and Steven Powers of Nigro Companies, the owner of the Brunswick Plaza. Mr. Freitag stated there were no changes or additions to the application since the November 19 meeting, although he did note there was one correction in a table on the signage plan submitted, stating that the number of total square footage of signage requested for the site was incorrectly listed as 146.11 square feet and that the correct amount is 178.11 square feet, but that the correct total square footage of 178.11 feet was noted in all other areas of the sign variance application, and the correction was simply to one table on the signage plan. The Zoning Board then opened a public hearing on the sign variance application, which seeks approval for a total of 8 signs on the site where 2 signs are allowed under the Brunswick Zoning Law; approval of a free-standing monument sign where no free-standing monument sign is allowed on the project site under the Brunswick Zoning Law; and a total square footage of signage on the site of 178.11 feet where the Brunswick Zoning Law allows 88 square feet. The notice of public hearing was read into the record, noting that the public hearing notice was 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. The Zoning Board members opened the floor for receipt of public comment. No members of the public wished to provide any comment. The Zoning Board members considered closing the public hearing. Attorney Gilchrist advised that in the event the Zoning Board closed the public hearing on the sign variance application, a determination will need to be made within 62 days, and questioned whether the Board felt it had adequate information and adequate time to make a determination on this application within that legal timeframe. Attorney Gilchrist also noted that the 62-day legal timeframe for decision could be extended upon consent of the applicant. Mr. Osterhoudt stated that the applicant would request that the public hearing be closed, and that if more time was needed than 62 days to make the determination, the applicant will be willing to work with the Zoning Board on the appropriate timeframe extension. Based upon further discussion of the Zoning Board members and the applicant, the Zoning Board determined to close the public hearing upon the understanding that the applicant will consent to extend the decision timeframe if additional time is needed. Chairman Steinbach then made a motion to close the public hearing, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing closed. Member Schmidt started the discussion by stating he was concerned about the proposed monument sign, and asked why Taco Bell could not be added to the existing tenant sign for the Brunswick Plaza located at the signalized intersection on Hoosick Road. Mr. Freitag then presented a summary of the reasons for the proposed sign package, stating that Taco Bell had prepared a comprehensive sign package for the site which was intended to provide long-term tenant success and also to provide a safe entrance into the restaurant and Brunswick Plaza; that the proposed signage would be on three sides of the Taco Bell building plus the free-standing monument sign located along the Hoosick Road corridor, with the free-standing sign being in harmony with the general commercial area and competitors

(including Burger King and Dunkin Donuts) which also had a monument sign at their locations; that the existing tenant monument sign at the entrance to the Brunswick Plaza had only one tenant space left, which the landlord has indicated needs to be available for existing vacant retail space in the Brunswick Plaza; that the new Sunmark Federal Credit Union building to be constructed adjacent to the Taco Bell will be located on its own separate parcel, and accordingly will have its own separate monument sign, and the proposed Taco Bell monument sign would be consistent with the Sunmark Federal Credit Union monument sign; and that with respect to the other requested variances, the applicant had included all signage (including directional signage) in the total number of signs being requested, and that the applicant had separated the Taco Bell logo sign between the logo itself and the text underneath the logo and calculated each as separate signage. Chairman Steinbach repeated his concern regarding the monument sign, and again asked about the ability to have the Taco Bell sign added to the existing tenant monument sign at the entrance to the Brunswick Plaza. Mr. Powers stated that the landlord currently has a Nigro Companies sign as a filler on the monument sign, but needed that empty sign space on the existing tenant monument sign for vacant retail space in the Brunswick Plaza, and referred to the vacant tenant space as “in line tenants”. Member Clemente asked whether there was more total tenant space in the Brunswick Plaza than there were available signage spaces on the tenant monument sign. Mr. Powers confirmed that there were more tenants than signage spaces on the tenant monument sign at the entrance to the Brunswick Plaza, and that the sign could be expanded but this would result in an even larger sign at the Brunswick Plaza entrance. Zoning Board members discussed how many retail tenant spaces there were in the Brunswick Plaza and how many spaces were available on the tenant monument sign, and it appears that there may be as many as 10 retail “in line” tenants without signage on the existing tenant monument sign at the entrance to the Brunswick Plaza.

Member Schmidt noted that the Taco Bell restaurant would be right on Hoosick Road, and already have visibility given its location, and questioned the need for an additional monument sign at this location. Mr. Osterhoudt repeated that the existing tenant monument sign needed to be reserved for retail “in line” tenants in the Brunswick Plaza, and that the additional monument sign is needed for long-term success of Taco Bell and the overall economic health of the plaza. Member Clemente noted that Taco Bell corporation had done an excellent job at marketing, and that just the picture of the bell in the Taco Bell logo was enough to bring visibility to this location, and stated that she did not see the need for any additional monument signage along Hoosick Road, given that the bell will be visible on the building and is universally known and commercially successful. This comment was supported by Member Schmidt. Mr. Osterhoudt stated that fast food restaurant customer base is driven significantly by pass-by commuter trips, and that roughly 50% of the customer base is driven by pass-by commuter trips, and in conjunction with that statistic additional signage is critical for the long-term success of the fast food restaurant use. Chairman Steinbach continued to voice concern on the monument sign, including the proposed height of 9 feet for the monument sign. Mr. Freitag stated that the text portion of the sign is 7 feet, with a base of 2 feet, for a total height of 9 feet. Member Clemente noted that if the monument sign was removed from the sign package proposal, this would remove 64 total square feet from the signage on the site, reducing the proposed total square footage to 114 square feet which was must closer to the 88 square feet allowed under the Brunswick Zoning Law. Chairman Steinbach asked whether a new tenant monument sign for the Brunswick Plaza had been discussed by the landlord. Mr. Powers stated it had not been discussed as an option. Mr. Freitag stated that relying only on the wall signage on the building would present a safety issue, as the cars on Hoosick Road would not have adequate time for stopping if relying only on the wall signage as opposed to a more visible

monument sign closer to the shoulder of the road. Member Clemente noted that additional signage at this intersection would present even more distraction, as there was already a lot going on in this location in terms of signage, turn lanes, and pedestrian crossings. Member Schmidt said the applicant should go back to the landlord and discuss enlarging the existing tenant monument sign or reducing the size of individual tenant signs on that monument sign. Mr. Osterhoudt stated that reducing the size of the tenant signs on the existing tenant monument sign is not an option, as this is set by the tenant leases, and that to enlarge the entire tenant monument sign would be expensive and also may require variances. Chairman Steinbach asked whether the proposed monument sign could be changed, including consideration of reduced height. Member Osterhoudt stated that the applicant could consider redesigning the sign to reduce the height, but this would increase the width of the sign, and that this alternative could be reviewed by the applicant. Chairman Steinbach stated this information should be submitted prior to the next Zoning Board meeting, and that he would require additional time to consider the application and to also allow him time to further research the signage on the Hoosick Road corridor. The Zoning Board members also requested the applicant to supply the economic data which Mr. Osterhoudt had discussed previously in the meeting, specifically regarding the percentage of customer base due to pass-by commuter traffic, with statistical information to support that position, and data to support the position that the monument sign was needed for long-term economic viability of the fast food restaurant. Member Schmidt then asked whether the proposed wall signs can be seen from Hoosick Road. This issue was discussed by the Board, with Chairman Steinbach noting that the east-bound traffic would see the proposed wall signage on the front corner of the building, and the west-bound traffic would see the signage over the entrance doors to the building, and concluded that commuters in both directions on Hoosick Road would be able to see the wall signage proposed for the Taco Bell

building. Member Clemente asked what was considered the “rear” side of the building, and whether any signage was proposed for the rear of the building. Mr. Freitag stated that the rear of the building is adjacent to the Price Chopper parking lot, and currently there is no signage proposed for this side of the building, as that was initially considered but eliminated as part of the overall signage package. Mr. Osterhoudt noted that this was initially investigated as Taco Bell would like signage for the Price Chopper parking lot customers to see, which supports the pass-by commuter traffic as the customer base for the fast food restaurant. The Zoning Board members requested that the applicant consider the alternative of eliminating the monument sign and proposing signage for the “rear” wall adjacent to the Price Chopper parking lot for consideration by the Board. The Zoning Board stated that they would like the requested additional information, including alternatives for the monument sign, elimination of the monument sign in consideration of wall signage on the “rear” wall of the building, as well as the economic data and statistics discussed by Mr. Osterhoudt, prior to their January meeting. The Zoning Board discussed the January meeting date, and determined that the January meeting would be held January 28 rather than January 21 due to the Martin Luther King holiday. This matter is adjourned until the January meeting for further discussion.

The Zoning Board members then formally set the January meeting date for January 28, rather than January 21, in light of the Martin Luther King holiday.

There were no new items of business discussed.

It is noted for the record that Member Sclafani has submitted her resignation from the Zoning Board of Appeals, due to an employment position and relocation out of the Town of Brunswick. The Zoning Board members thank Member Sclafani for her service to the Town of Brunswick.

The index for the December 17, 2018 meeting is as follows:

1. Macy - Area variance - Granted;
2. Duncan - Area variances (38 Duncan Lane) - Granted with condition;
3. Duncan - Area variance (32 Duncan Lane) - Granted with condition;
4. Hospitality Syracuse, Inc. - Sign variances - January 28, 2019.

The proposed agenda for the January 28, 2019 meeting currently is as follows:

1. Hospitality Syracuse, Inc. - Sign variances.