

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 AUGUST 20, 2018

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

ABSENT was CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

Chairman Steinbach reviewed the agenda for the meeting.

The Zoning Board members reviewed the draft minutes of the July 16, 2018 meeting. Upon motion of Member Clemente, seconded by Member Shover, the minutes of the July 16, 2018 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Christopher Daley for property located at 688 Tamarac Road. The applicant is seeking to build an overhang addition to the rear of a nonconforming garage within the front yard setback area. The applicant stated that there were no changes to the application documents, and generally described the location of the existing garage on Tamarac Road and the location of the proposed overhang addition to the rear of that existing garage. The Zoning Board then opened a public hearing on the application. The notice of public hearing was read into the record, with that notice having been published in the Troy record, placed on the Town signboard, posted on the Town website, and mailed to owners of all properties within 300 feet of the project site. Chairman Steinbach opened the floor for receipt of public comment. Barb Martell stated that she lives next door to the Daleys;

that she had no issue with the Zoning Board granting the area variance; that she had no problem with the proposed project; and that the new overhang addition will be on the rear of the existing building and not visible from Tamarac Road. There were no further comments from the public. Chairman Steinbach inquired whether any of the Zoning Board members had questions on the application. No members of the Zoning Board had any questions. Member Clemente made a motion to close the public hearing on the Daley area variance, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. The Zoning Board members determined that they would proceed to deliberation and action on the application. Attorney Gilchrist noted that the application had been referred to the Rensselaer County Department of Economic Development and Planning, and that the recommendation had been received from the County Planning Department indicating that the project did not conflict with County plans and that local consideration shall prevail. Attorney Gilchrist also stated that the application seeks an individual setback variance in connection with a residential use, and constitutes a type 2 action under SEQRA. Attorney Gilchrist reviewed the standards for the Zoning Board to consider in connection with the area variance application. As to whether the requested variance would produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Schmidt stated that, since you cannot see the proposed overhang addition from Tamarac Road as it will be constructed on the rear of the garage building, there would be no impact to the surrounding character of the neighborhood and it would not create a detriment to nearby properties. Chairman Steinbach concurred, stating that the overhang would be constructed to the rear of the existing structure and would be used only to keep equipment under cover. The remaining Zoning Board members concurred in these findings. As to whether a feasible alternative was available to the applicant, Member Clemente noted that this was a unique

situation with an existing nonconforming garage, and that to construct the overhang addition to that garage requires the overhang to be within the front yard setback, and that there would not be any other feasible way to complete this project. All members concurred in that finding. As to whether the requested area variance is substantial, Member Clemente felt that this was not substantial due to the unique situation of an existing nonconforming garage. All members concurred in that finding. As to whether the project would result in an adverse effect on the physical or environmental conditions in the neighborhood, Member Shover stated that there would be no adverse physical or environmental effects as the area is flat, well drained, and the overhang addition would not be visible from the public road. All members concurred in this finding. As to whether the difficulty requiring the area variance is self-created, Member Clemente felt that the need for the variance is self-created, but that the existence of a nonconforming garage with a proposed overhang addition is a unique set of facts, and the property owner is merely seeking to comply with the current Brunswick Zoning Law. All members concurred, noting that this factor is relevant but not determinative. Based upon a consideration of these factors, and upon the information contained in the application documents, and considering the public comment received during the public hearing, and in weighing the benefit to the applicant in granting the variance as opposed to any detriment to the neighborhood in particular or town in general, Member Schmidt made a motion to grant the area variance, which motion was seconded by Member Clemente. The motion was unanimously approved, and the area variance granted. The applicant was directed to coordinate with the Building Department on a required building permit.

The next item of business on the agenda was an area variance application seeking two area variances submitted by Joseph Delamater for property located at 267 Grange Road. The applicant proposes to construct a detached garage that exceeds the allowable total square footage and height

limitations under the Brunswick Zoning Law. The applicant was present, and confirmed that there were no changes to the application documents. The applicant generally reviewed the proposed garage structure, and its intended location and use. The Zoning Board opened a public hearing on the application. The notice of public hearing was read into the record, with that notice having been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of all properties within 300 feet of the project site. The Zoning Board opened the floor for receipt of public comment. Paul Culligan, 235 Grange Road, stated that he owned the neighboring property; that he was concerned regarding the number of structures already on the property, and also the number of pieces of equipment and trailers; that he had concerns that the amount of equipment and vehicles on the site would grow as a result of the additional garage; had an inquiry as to what would happen to the existing equipment on the property after the garage was built; whether the garage would be used for any commercial purposes; and that he would not have any concern if the existing equipment on the property would be stored in the proposed garage, but that he would have a concern if the garage were built and the equipment was still stored outside as it is today. No other members of the public wished to comment. Member Clemente had a question for the applicant concerning the orientation of the garage on the property, and what would be the view of the garage from Grange Road. The applicant explained the orientation of the building, as well as the view of the garage from Grange Road. The applicant stated that he had designed the garage to have a residential look, but also be large enough to house his equipment and meet his needs. No other members of the Zoning Board had any questions. Upon motion of Member Clemente, seconded by Member Shover, the public hearing on the Delamater area variance application was closed. Chairman Steinbach requested that Mr. Delamater respond to the comments and concerns of his neighbor. Mr. Delamater explained that he keeps most of the

equipment that he owns on a farm in Pittstown, and that the trailers and equipment that are stored on the Brunswick property will either be relocated to his farm in Pittstown, or will be placed inside the proposed garage, and that he did not have any intent to have equipment located in the field after the garage was built. Member Clemente asked whether the Town should have any concern regarding the amount of equipment stored on the site. Ms. Guastella stated that the equipment on the site is a property maintenance issue, which is addressed to the Building Department. Ms. Guastella confirmed that the proposal to build the accessory structure is in compliance with the Zoning Law, except for the proposed square footage as well as height, which are not in compliance with the area and bulk limitations in the Brunswick Zoning Law and do require the area variances which have been applied for. Member Schmidt had questions regarding the height of the walls, and why the structure was so tall. Mr. Delamater stated that he needed the height to get an existing RV/camper into the garage, and needs the door to be 14 feet because the height of the camper is approximately 14 feet. Member Schmidt asked whether the pitch of the roof could be changed to reduce the total height. Mr. Delamater stated that he would like to maintain the proposed pitch of the roof so that it fit in with the existing structures in the neighborhood. Member Shover asked about the construction materials for the garage. Mr. Delamater stated that it would be wood construction, with vinyl siding, with an architectural roof. Member Shover asked about the approximate elevation of the roof of the proposed garage in relation to the elevation of Grange Road. Mr. Delamater stated that he did not know the exact elevations, but that there is a fairly significant elevation change between Grange Road and the area where the garage will be located, and that most of the garage would be at a lower elevation than Grange Road. Member Clemente stated that one of the concerns of Mr. Delamater's neighbor is a potential commercial use for the garage. Mr. Delamater responded that there would not be any commercial use of the proposed

garage, and that he runs any commercial activity out of his farm located in Pittstown. The Zoning Board noted that there was a 40-foot container located on the site. Mr. Delamater stated that the 40-foot container will be removed when the garage is built. Chairman Steinbach stated that he felt the garage would clean up the property, that Mr. Delamater would be putting the equipment in the garage, and that he would have no problem with adding a condition that the equipment must be stored in the garage. Attorney Gilchrist stated that any condition attached to the area variance must address the building structure itself, and not be addressed to general property maintenance issues. The Zoning Board members stated that they did have the opportunity to visit the project site. The Zoning Board members stated that they were prepared to deliberate and act on the application. Attorney Gilchrist noted that the application had been forwarded to the Rensselaer County Department of Economic Development and Planning, that a recommendation had been received from the County providing that the proposal does not have a major impact on County plans and that local consideration shall prevail. Attorney Gilchrist also noted that the application seeks an area variance in connection with residential use and constitutes a type 2 action under SEQRA. Attorney Gilchrist reviewed the standards for consideration in connection with the area variance requests. As to whether the proposed area variances, including total square footage of the structure as well as structure height, would create an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairman Steinbach noted that the schematic of the proposed garage included in the application documents and as described by the applicant will result in a building style that fits into the neighborhood and the specific orientation of the building on the parcel is appropriate. The Zoning Board members concurred in that finding. As to whether a feasible alternative is available to the applicant, Member Shover noted that the applicant could make the total size and height of the garage structure smaller, but that this would

not meet the needs of the applicant in terms of housing the RV/camper and equipment. Chairman Steinbach noted that the applicant has explained the purpose of the proposed garage and the need for the proposed size and height of the garage, and finds this purpose to be reasonable—noting that, if the height were reduced, the structure would not meet the need to house the RV/camper which right now is being stored outside on the property. As to whether the requested variances were substantial, Chairman Steinbach felt that the height variance was not substantial, where the applicant is proposing 26 feet and that 20 feet is allowed under the Brunswick Zoning Law; Chairman Steinbach did feel that the variance for total square footage is substantial, with the Brunswick Zoning Law allowing a 1,500 square foot building and a 2,400 square foot building being proposed. Member Schmidt noted that the height is not an issue due to the elevation change from Grange Road, and while the variance for the total square footage for the building could be deemed substantial, it is located on a nearly 12-acre parcel. As to whether the proposed area variances would result in an adverse effect on the physical or environmental conditions in the neighborhood, Chairman Steinbach inquired whether any drainage issues would arise. Mr. Delamater stated that he bought the property in 2011, installed an underground tile system that keeps the field very well drained, and does periodically clean out a creek that runs through the property in order to avoid any drainage issues. Member Clemente noted that the use of the garage to store the equipment inside would have a positive effect on the neighborhood. Chairman Steinbach also noted that the garage design is attractive and fits into the neighborhood. As to whether the need for the variances are self-created, the members generally concurred that the need for the two area variances is self-created, but did note that while the garage could be smaller, it would not address the needs of the applicant in terms of trying to house equipment which is currently stored outside. Based upon these findings, and consideration of the information in the

application documents, comments received during the public hearing, and in weighing the benefit to the applicant in granting the two requested area variances as opposed to any detriment to the neighborhood in particular or town in general, Member Schmidt made a motion to approve the two area variances for the proposed garage upon the condition that the garage is not to be used for commercial purposes. Chairman Steinbach seconded the motion subject to the stated condition. The motion was unanimously approved, and the two area variances granted subject to the stated condition.

The next item of business on the agenda was the area variance application submitted by Eric Premo for property located at 139 Smith Hill Road. The applicant seeks a variance for total square footage for a proposed pole barn as an accessory structure to a new home to be located on the property. Eric Premo was present, and confirmed there were no changes to the application documents, and generally reviewed the proposal to construct a barn structure on property located at 139 Smith Hill Road. The Zoning Board opened the public hearing on the application. The notice of public hearing was read into the record, with that notice 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. The Zoning Board opened the floor for receipt of public comment. Erin Crotty, 7 Howe Lane, stated she lived across the street from Mr. Premo's property; that she had lived there 16 years with her husband and now their 9 year old son; that she had read the minutes of the previous Zoning Board meeting online, and had pulled the Premo area variance application and reviewed it; that she had several concerns regarding the variance application, stating that she was unclear as to the use of the barn structure, and whether it was for logging, maple syrup production, farming, or another use; questioned why a 2,500 square foot barn is being proposed when the size limit in the Zoning Law is 1,500 square feet; why an

accessory barn structure was being built before the primary residence is being built; that the neighbors in this area are very neighborly, and while they live on large parcels and enjoy privacy there are also very neighborly, and that it is a wonderful community on the mountaintop, and that this proposal raises several concerns on her part. John Howe, 162 Smith Hill Road, stated that he had not met Mr. Premo before, and was interested what the barn structure would be used for; that he was not opposed to the barn, but that its use could be a concern in relation to increased noise or commercial uses. No further members of the public wished to comment on the application. Member Clemente then made a motion to close the public hearing on the Premo area variance application, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. Chairman Steinbach noted there were several questions from the public, and requested Mr. Premo to respond. Mr. Premo stated that the use of the barn would be for storage of his vehicles and equipment—including a trailer, four-wheelers, a tractor, a plow, a dump truck, and tools—and the barn would allow a secure storage facility for his vehicles and equipment. Mr. Premo also stated that he will be building the residence and the barn structure at the same time, and was looking to start the house construction this fall. Chairman Steinbach asked about any farming use for the barn. Mr. Premo stated that while he and his wife have investigated the option of maple syrup production or other farming use, the current use of the barn is just for storage, and that there are a number of requirements under the New York Agriculture and Markets Law in order to be considered an agricultural operation. Mr. Premo confirmed that he was just looking at potential agricultural uses as a future possibility, and that nothing is being planned currently for agricultural use. Chairman Steinbach wanted to confirm the Zoning District in which the property is located. Ms. Guastella stated that the property is located in the A-40 Agricultural Zoning District. Mr. Premo stated that he has a total of 83 acres at this location, but

had subdivided 6 acres for the house and barn construction for financing purposes, and that the barn will be located approximately 1,000 feet from the public road. Chairman Steinbach asked the method Mr. Premo used to come up with the size of the proposed barn. Mr. Premo stated that he looked at the present size needs given his vehicles and equipment, and had the barn designed to meet his current needs. Member Schmidt asked about the height of the structure. Ms. Guastella confirmed that the height is in compliance with the Brunswick Zoning Law area and bulk table, and that the only variance being sought is for total square footage of the barn structure. Mr. Premo stated that a 1,500 square foot structure is allowable under the Brunswick Zoning Law, but he is looking to build a 42-foot by 60-foot barn totaling 2,520 square feet. Member Clemente stated that the use of the barn would be for storage only in connection with his residential use, and that the building could not be used for any commercial use, and that if a different use was being proposed in the future it would require further review by the Zoning Board. Mr. Premo understood this requirement. Mr. Premo stated that he was not trying to disrupt the neighborhood and that he was looking to build a barn that would fit into the general character of the area. The Zoning Board members determined that they were prepared to deliberate and act on the application. Attorney Gilchrist stated that the applicant seeks an area variance in connection with residential use, and constitutes a type 2 action under SEQRA. Attorney Gilchrist reviewed the standards to be considered by the Zoning Board in connection with the area variance application. As to whether the proposed variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, the Zoning Board members generally concurred that both the proposed barn and new house would fit into the general character of the neighborhood; would be located centrally within a very large parcel; and that the barn would be located 1,000 feet from the public road and would not be visible from neighboring properties. Erin Crotty spoke

from the audience, stating that the Zoning Board should ask whether she could see the barn structure from her house. Attorney Gilchrist advised the Zoning Board that the public hearing was closed, but of course could entertain the comment from Ms. Crotty. The Zoning Board asked Ms. Crotty if she could see the proposed barn location from her property. Ms. Crotty stated that she could now see a white building located on the property that she couldn't see before, and could now see it as a result of a lot of clearing that Mr. Premo had done on the property; that she can see this white building from her kitchen and deck; and that she could not see the white structure before but can see it now after the clearing was done by Mr. Premo. The Zoning Board noted that the white building to which Ms. Crotty was referring was noted on the plans submitted by Mr. Premo as "garage to be removed", and that the proposed barn was located in another area on the Premo property. The Zoning Board asked Mr. Premo whether the barn would be visible from Ms. Crotty's property. Mr. Premo stated that he did not know whether it would be visible, that it might be visible when the leaves are off the trees. Member Clemente noted that the real issue from Ms. Crotty's property was the difference in elevation, and that Ms. Crotty's property was higher in elevation and was looking down on the Premo property. Ms. Crotty concurred, stating that she was staring down on the Premo property from her kitchen and deck. Member Clemente noted that the white building referred to by Ms. Crotty would be removed from Mr. Premo's property but that would be the general location of the new house to be built, that the new house can be built without the need for any variance from the Zoning Board, and that the barn is proposed to be built on another part of the property. Member Clemente noted that on several other applications that had previously come before the Board, neighbors generally discuss proposed projects to determine whether there are any objections or whether any amendments can be made to address concerns, but that did not appear to have happened here. The Zoning Board members generally found that

the use of the property for a residence and barn, even given the proposed size of the barn, was in keeping with the general character of the neighborhood. As to whether a feasible alternative is available to the applicant, Member Schmidt noted that again the applicant could build a smaller barn, but that even a 1,500 square foot barn could be visible from the neighbors' perspective. Attorney Gilchrist inquired whether the Zoning Board members had the opportunity to visit the site or had general knowledge of the area. The Zoning Board members stated that they did have general knowledge of the area and had the opportunity to visit the site. Mr. Premo confirmed that he had completed some clearing on the property in the general location where the barn and the house will be built, but that the rest of the property would remain wooded and would not be touched, and that the wooded areas are generally all hardwood, pine, and hemlock. As to whether the requested variance is substantial, Member Schmidt again stated that he felt the variance was substantial from a numbers standpoint, but that this is a proposed barn structure on a very large piece of land which mitigates this factor. The Zoning Board members agreed with that finding. As to whether the proposed barn would result in an adverse effect on the physical or environmental conditions in the neighborhood, the Zoning Board members generally concurred that the addition of a new house and barn would not have any adverse effect on the physical or environmental condition in the neighborhood, noting that a house had existed on this parcel which had burned down. As to whether the need for the variance is self-created, the Zoning Board members concurred that the need for the variance is self-created, but did not find this factor to be determinative in this case. The Zoning Board members then generally discussed the issue of building a barn as an accessory structure prior to building and completing the primary residence, and whether the Zoning Board could condition any action to require the construction of the primary residence at the same time or shortly after the construction of the barn. Attorney Gilchrist stated

that a reasonable condition would be to require the house construction to be commenced within a certain period of time after the barn construction had been commenced. Member Schmidt also felt an appropriate condition would be to not allow the barn to be used for commercial purposes. The Zoning Board members then further discussed vegetative screening between the barn location and adjacent parcels, with the applicant showing a satellite image of the properties from the internet. It is noted for the record that the satellite image reviewed by the Zoning Board members was dated, depicting the old house on the property which had previously burned down, and that the satellite image may not accurately depict current vegetation on the property. Following this deliberation, and based upon the Zoning Board findings, upon a review of the application materials, and upon consideration of the public comments received, and in weighing the benefit to the applicant in granting the variance as opposed to any detriment to the neighborhood in particular or the Town in general, Member Schmidt made a motion to grant the area variance on the Premo application upon the following conditions:

1. The barn cannot be used for any commercial purposes, noting that any agricultural use of the barn would be subject to the requirements of the New York Agriculture and Markets Law; and
2. The construction of the primary residence on the property must be commenced within 90 days of the start of construction of the accessory barn, which time limitation is subject to extension by the Zoning Board of Appeals for up to an additional 6 months upon good cause shown by the applicant.

The motion was seconded by Chairman Steinbach. The motion was unanimously approved, and the area variance granted subject to the stated conditions.

Two items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Deanna Catherwood for property located at 41 Green Street. Ms. Catherwood was present, and explained that the area variance was seeking a rear yard setback variance for the installation of an in-ground pool. Ms. Catherwood explained that the property is located in Sycaway in the R-9 Zoning District, and that they are proposing to install a 15-foot by 25-foot kidney-shaped in-ground pool. Ms. Catherwood explained that originally the pool company thought the pool could be located in an area compliant with the rear yard setback, but when the pool was actually laid out in the yard, that location did not work as it was too close to an existing deck, and so the application is seeking to locate the pool ten feet from the rear yard lot line as opposed to the required 20-foot setback. The Zoning Board members reviewed the application materials, and found them to be complete for purposes of scheduling the public hearing. A public hearing on this application is scheduled for the September 17 meeting to commence at 6:00pm. The Zoning Board members confirmed that it was on consent with the property owner to visit the property and look at the yard, and Ms. Catherwood consented and stated that the pool outline would be painted on the property within a few days.

The second item of new business discussed was a sign variance application submitted by John Brownrigg on behalf of Shivam Construction Inc. and Parko Holdings 2 LLC. The project site is 1163 Hoosick Road, at which a convenience store with gas pump island is currently being constructed on the site of the former Spiak's Garage. Mr. Brownrigg reviewed the sign variance application, which seeks a variance for the total number of signs allowed as well as the total square footage of the proposed free-standing monument sign for the project. Mr. Brownrigg reviewed the proposed signs, which include directional and safety signs, handicap signs, canopy signs over

the gas pumps, wall signs, and monument sign. Mr. Brownrigg explained that the actual signage on the proposed building is not included in the application because he has not been able to obtain a franchisee for the convenience store, but that the size of the wall sign will be limited to the remaining square footage allowable under the Brunswick Sign Law, but there may be a future amendment to any sign variance granted dealing with the total number of signs the franchisee may require. Upon review of the application materials, the Zoning Board members deemed the application complete for scheduling the public hearing. This matter is scheduled for public hearing at the September 17 meeting to commence at 6:15pm.

The index for the August 20, 2018 meeting is as follows:

1. Daley - Area variance - Granted;
2. Delamater - Area variances - Granted with condition;
3. Premo - Area variance - Granted with conditions;
4. Catherwood - Area variance - 9/17/2018 (public hearing to commence at 6:00pm);
5. Shivam Construction - Sign variance - 9/17/2018 (public hearing to commence at 6:15pm).

The proposed agenda for the September 17, 2018 meeting currently is as follows:

1. Catherwood - Area variance (public hearing to commence at 6:00pm);
2. Shivam Construction - Sign variance (public hearing to commence at 6:15pm).