

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 MAY 20, 2019

PRESENT were E. JOHN SCHMIDT, WILLIAM SHOVER, ANN CLEMENTE, and PATRICIA CURRAN.

ABSENT was MARTIN STEINBACH, CHAIRMAN.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department. Member Clemente served as acting Chair in Chairman Steinbach's absence.

The Zoning Board reviewed the draft minutes of the April 15, 2019 meeting. Member Shover made a motion to approve the minutes, which was seconded by Member Schmidt. The motion was unanimously approved and the April 15, 2019 meeting minutes were approved without amendment.

Acting Chair Clemente reviewed the agenda.

The first item of business addressed by the Board was the application of Todd and Kathleen Duncan seeking two variances for property located at 462 McChesney Avenue. Brian Holbriiter appeared on behalf of the applicant. The applicant is seeking a front yard variance to allow location of a garage 36.5 feet from the front lot line where 40 feet is required and a front yard variance to allow a porch located 38.7 feet from the front lot line where 40 feet is required. Mr. Holbriiter explained that the lot was created by a subdivision of a relative's lot in the fall of 2018 and that the foundation for the proposed home was inadvertently installed in the wrong location. Mr. Holbriiter stated that he reviewed neighboring properties and that the proposed variance would not

be out of character with the existing conditions of the neighborhood. Mr. Holbriiter submitted several examples of homes that do not meet the current zoning requirements. Mr. Holbriiter indicated that the home is a modular home that is waiting to be set on the foundation and asked whether or not the applicant could move forward with placing the home, understanding that it was doing so with an understanding that the variances may or may not be approved. The Zoning Board responded that the variances could only be approved through the same process that is required for all variance applications and that the applicant should wait for a decision on the variances before moving forward with the project. Acting Chair Clemente asked the applicant what company was building the home, and Mr. Holbriiter responded that it was Grafton Mountain Modulares. Mr. Shover asked how the foundation was installed in the wrong location. Mr. Holbriiter responded that he had staked out the location of the foundation, but for unknown reasons, the excavator installed it in a slightly different location. The Zoning Board then determined that the application was complete for purposes of scheduling a public hearing. The Zoning Board scheduled a public hearing to be held on the application for June 17, 2019 at 6:00pm or as soon thereafter as may be heard. The Zoning Board asked Mr. Holbriiter whether they had consent to visit the site, and he responded that consent was granted.

The next item of business addressed by the Zoning Board was the area variance application submitted by Charles Alund, Jr. for property located at 63 North Langmore Lane. The applicant is proposing to install a 16-foot by 16-foot garden shed on the lot, which constitutes a corner lot, and seeks a front yard setback variance for the proposed location of the garden shed. The Brunswick Zoning Law requires a 60-foot front yard setback, whereas Mr. Alund is proposing a 44-foot front yard setback, resulting in a 16-foot variance request. Acting Chair Clemente reviewed the procedure applicable to the application and noted that the Zoning Board must make

a decision within 62 days of the close of the public hearing and further stated that the Building Department had provided minutes from a prior area variance application for the same property seeking approval for the location of a 16-foot by 16-foot garden shed that was made in 2010. Mr. Alund stated that the application that was made previously was rescinded by him at the 9th meeting at which the matter was addressed. The Zoning Board of Appeals record reflects that a decision, however, was rendered on the application on October 18, 2010. In that application, the applicant sought to place a shed 42 feet from the front lot line where 75 feet was required, and 7 feet from the rear yard setback where 25 feet was required. The Zoning Board of Appeals granted a variance to allow the placement of the shed 52 feet from the front lot line and 17 feet from the rear lot line on the condition that the concrete pad which the applicant had poured without a building permit be removed and that the applicant plant two mature trees to serve as a buffer between the shed and the neighboring property. Attorney Tingley explained to the Board that the first question the Board should consider is whether or not the current application materially differs from the prior application. In the event the current application is substantially similar to the prior application, Attorney Tingley explained that the Zoning Board would be bound by its previous decision. In the event that the application is not substantially similar to the prior application, the Zoning Board would then need to apply the area variance application criteria and render a decision on the merits of the current application. The applicant stated that the application is different in part because the current application does not seek a rear yard setback variance. Acting Chair Clemente stated that the current application is different from the prior application in her view because the Town Zoning Law was different in 2010 and the proposed location of the shed is different now. Under the prior application, the applicable front yard setback was 75 feet, whereas now it is 60 feet. In addition, under the prior application, the applicant was previously seeking a variance from a rear yard

setback, whereas now no such variance was required. Acting Chair Clemente then identified what she viewed as being the similarities between the prior application and the current application. In that respect, Acting Chair Clemente pointed out that both variances were for location of a 16-foot by 16-foot shed, the topography on the site is the same, the location of the septic system is the same, and the overhead power line location is the same. Member Schmidt pointed out that the prior application was approved but not for the location where the applicant had poured the concrete slab or for where the applicant sought permission to construct the shed. Member Schmidt pointed out that the original approval required, as a condition, removal of the concrete slab and asked whether or not the existing slab had been removed. The applicant stated that he rescinded the prior application prior to a decision. The applicant stated that the concrete slab had not been removed, but that there existed a 6-foot fence between the concrete slab and the neighboring property which blocks the view from the adjoining property of the concrete slab. Acting Chair Clemente asked the applicant to explain the location that he was proposing for the shed. The applicant responded that he had relocated the shed as much as he could on the site given the existing topography. Following this discussion, Member Schmidt made a motion to classify the action for SEQRA purposes as a Type 2 action requiring no further SEQRA review. Member Shover seconded the motion, and the motion was approved unanimously. Acting Chair Clemente then made a motion to determine that the application currently before the Board is materially different from the application that was previously before the Board and acted upon by the Board in 2010. Member Schmidt seconded the motion. The motion was unanimously approved. The Zoning Board then discussed the area variance criteria. Member Schmidt stated that most homes in the neighborhood had sheds and that the particular location of the shed was not necessarily much different from the existing conditions in the neighborhood. Acting Chair Clemente stated that the applicant worked

to keep the shed consistent with the home and the neighborhood. Member Schmidt stated that he did not believe that there was a reasonable alternative available to the proposed variance to allow for the shed. Acting Chair Clemente stated that the existing topography prevents locating the shed in an area that complies with the Zoning Law, and the existing septic system also inhibits such location. Acting Chair Clemente stated that it was her view that the proposed location is the most feasible alternative. Acting Chair Clemente stated that she does take some exceptions to the claim by the applicant that the cost to remove the slab is prohibitive. She stated that she believes that sod could be placed over the slab with some topsoil and the slab would no longer be noticeable. Acting Chair Clemente then stated that she believed that numerically, the requested variance was substantial. The neighborhood consists of small lots, and the 16-foot encroachment would constitute a variance of about 25%. With respect to environmental impacts, the Zoning Board discussed that the action was a Type 2 action and that there were no adverse physical or environmental impacts identified. The Zoning Board further stated that they did not believe the difficulty was self-created, because the lot sizes are small, the topography is an existing condition that impairs the location of the shed in compliance with the Zoning Law and the applicant has attempted to comply with the Zoning Law. Member Schmidt then raised the issue of whether or not the variance should be granted with a condition that the slab be removed. Acting Chair Clemente stated that it was her view that the slab was obscured from view from the north and a fence exists that screens the slab from view from the south. The Zoning Board further stated that in considering the area variance criteria, the existence of the slab did not enter into their discussions. The applicant asked whether he could address the Board during its deliberations. The Zoning Board allowed the applicant to address the Board. The applicant stated that he would agree to plant trees to screen the shed from view from Woodcut Lane. The applicant agreed to plant

between four and five trees between his driveway and the fence. Acting Chair Clemente made a motion to approve the variance with the condition that the applicant plant four to five spruce trees in the location identified, which motion was seconded by Member Shover, and which was unanimously approved.

The next item of business addressed by the Board was the area variance application submitted by Bonnie and Steve Cornell for property located at 86 Creek Road. The applicant seeks to install a 24-foot by 22-foot carport at the end of the house where the entrance to the home is located. The back corner of the carport would be located three feet too close to the property line. The required side yard setback under the Brunswick Zoning Law is 25 feet, whereas the applicant is seeking permission to construct the carport 22 feet from the side yard lot line. The Zoning Board reviewed the application materials and determined that the application is complete for purpose of scheduling a public hearing. The Zoning Board scheduled the public hearing to be held on June 17, 2019 at 6:00pm, or as soon thereafter as may be heard.

The next item of business on the agenda was the application by Hope Solar Farm for property located at 575 Garfield Road. Andrew Thomas, from Bullrock Solar, was present on behalf of the applicant. Mr. Thomas explained that he had been working with National Grid on how to connect the approved solar farm to the National Grid electric lines along Garfield Road. Mr. Thomas explained that a variance had previously been approved to allow for overhead utility poles whereas the Brunswick Zoning Law requires underground utility lines for solar farms, and that one roadside pole was permitted as part of that variance approval. In working with National Grid, Mr. Thomas explained that, due to National Grid's requirements, a one-roadside-pole configuration would require location of the pole directly to the west side of the existing Hope United Methodist Church entrance sign off of Garfield Road. Mr. Thomas stated that he worked

with National Grid to reconfigure the layout because the location of the single roadside pole immediately next to the entrance sign for the church was not a preferable location for the church's Board of Directors. The alternative would require two poles to be installed, which exceeds the one roadside pole permitted by the prior variance approval. Mr. Thomas stated that the two-pole configuration is more aesthetically pleasing than the one-pole configuration since the one-pole configuration would stand out and the two-pole configuration would have a backdrop of pine trees. Mr. Thomas presented an aerial depiction of both options for the Board's consideration. Mr. Thomas stated that there would be no other project changes that would affect the conditions of the prior variance. Mr. Thomas further stated that the church Board of Directors would accept the one-pole configuration if required, but that it preferred the two-pole configuration. Mr. Thomas further stated that the two-pole configuration would not require any additional tree-cutting. Mr. Thomas then explained the technical reasons behind the requirement that the one-pole configuration be located immediately next to the Hope United Methodist Church entrance sign. Acting Chair Clemente disclosed that her property is on the list of neighboring property owners, stated that she believed she could consider the application objectively, and asked whether the applicant had any objection to her continuing to sit on the Board for this application. The applicant indicated that he did not object to Acting Chair Clemente remaining on the Board for consideration and action on the application. The Board then determined that the application was complete for purposes of scheduling a public hearing. The public hearing was scheduled for June 17, 2019 at 6:00pm or as soon thereafter as may be heard.

The next item addressed by the Zoning Board was the application by Sunmark Federal Credit Union for property located at 722 Hoosick Road. Gregg Ursprung from Bergmann Associates appeared on behalf of the applicant. The applicant is proposing a monument sign for

the property. Mr. Ursprung stated that the applicant was seeking two variances, one to allow the free-standing monument sign on property where the front building setback was 38 feet where 50 feet is required, and the other which required 150 feet of road frontage for a monument where the existing road frontage was only 149 feet. Mr. Golden clarified that, upon closer examination, he had determined that the second variance referenced by Mr. Ursprung regarding frontage was not actually required, and instead only the first variance mentioned was needed. Mr. Ursprung stated that two lots along Hoosick Road had been combined into the Brunswick Plaza Planned Development District property, with a separate lot thereafter created to accommodate the bank building. Given the layout of the bank lot, the building is 38 feet from the front lot line. Mr. Ursprung stated that the building must be located at least 50 feet from the front lot line to allow for a monument sign. Mr. Ursprung stated that the proposal will not impact the neighborhood as monument signs are common in the commercial area along Route 7. Mr. Ursprung also submitted a photo of a sign at a comparable Sunmark Federal Credit Union facility. Mr. Ursprung further stated that the proposed monument sign will meet all sign requirements. Acting Chair Clemente asked whether there would be a sign on the building. Mr. Ursprung responded that there would be a sign on the building, and that the applicant was seeking the variance to allow for a monument sign to increase exposure to the traffic on Hoosick Road. The Zoning Board determined that the application was complete for purposes of scheduling a public hearing. The public hearing was scheduled for June 17, 2019 at 6:00pm, or as soon thereafter as may be heard.

The next item of business addressed by the Board was the application of Blue Sky Towers II, LLC and Celco Partnership d/b/a Verizon Wireless seeking a public utility use variance for property located at Creek Road (Tax Map Nos. 113.-5-7.1 and 113.-5-10.11). David Brennan, Esq. of Young Sommer LLC appeared on behalf of the applicant. Mr. Brennan indicated that he

was reintroducing a project that was previously before the Town. Mr. Brennan stated that a new application is being submitted under the current Zoning Law and that it was submitted on Friday, May 10, 2019. Mr. Brennan stated that he was present to provide an introductory look at the application and that the applicant was not anticipating a completeness determination or the scheduling of a public hearing at this evening's meeting. Mr. Brennan submitted the owner consent signature form to Mr. Golden. Mr. Brennan explained that the site works best for telecommunication purposes where the monopole tower is located at the top of the hill and, as the elevation drops, the height of the pole must increase in order to remain effective. Mr. Brennan indicated that he had provided a simulation for the Board's consideration. Mr. Brennan stated that the subject property was zoned in a way that prohibited towers, which is the reason the applicant is now seeking a public utility use variance. Mr. Brennan stated that the area is lacking in service and that it is expected that two major carriers, Verizon and AT&T, would be placing antennas on the pole. Mr. Brennan stated that in light of the change to the Brunswick Zoning Law, the special permit and site plan applications for the project would be reviewed by the Planning Board, and the use variance application would be reviewed by the Zoning Board of Appeals. Mr. Brennan stated that the applicant acknowledged that the Planning Board or Zoning Board of Appeals would need to serve as lead agency under SEQRA and further stated that it was his opinion that the Planning Board could not act on the special use permit and site plan application without the Zoning Board of Appeals acting on the use variance. Mr. Brennan stated that he understands that the Planning Board and Zoning Board of Appeals process would need to be coordinated in some fashion. Mr. Brennan stated that the application is subject to the federal shot clock, which requires that comments on completeness be submitted to the applicant within 30 days of submission of the application, and that action be taken within 150 days. Mr. Brennan stated that a Planning Board

member had raised a discussion regarding doing a “tree” pole. He stated that at certain heights and in certain situations a tree pole can be aesthetically pleasing and identified that there were two examples located on Route 40 in Melrose. Those tree poles are approximately 80 feet tall. Mr. Brennan also stated that there is a tree pole that is between 120 to 150 feet tall in Schaghticoke that is not aesthetically pleasing because it actually stands out. Mr. Brennan stated that the application includes materials that show that the need for the tower exists at this location. Mr. Brennan stated that the applicant is willing to work on location and other aspects of the proposal. Mr. Brennan then discussed the existing coverage footprint and explained that the strength of the signal decreases as development increases. The development in the area over recent years has given rise to a decrease in the coverage footprint. Mr. Brennan stated that he understood that Mr. Golden, Attorney Gilchrist, and the Town’s designated engineer would need to discuss procedure in order to coordinate the reviews between the Planning Board and Zoning Board of Appeals. Mr. Brennan also discussed various other potential sites and indicated that none of the other potential sites worked, except a Town-owned parcel which was subject to a conservation easement. Acting Chair Clemente made a motion to retain Laberge Group as the Town’s consulting engineer, which motion was seconded by Member Shover, and was unanimously approved. Mr. Brennan requested to be on the agenda for June 17 for further discussion. Mr. Laberge indicated that he expects to be able to have comments on completeness ready within the 30-day period, but Mr. Brennan indicated that at this point in the procedure, the applicant would consider extending that as may be necessary. Attorney Tingley inquired of Mr. Brennan whether the applicant was consenting to extend the 30 days to provide comments on completeness until the next Zoning Board of Appeals meeting. Mr. Brennan stated that if the Town-designated engineer needed additional time beyond the 30 days, Attorney Gilchrist should advise Mr. Brennan and he will discuss that with his client. Mr. Laberge

stated that he would email Attorney Gilchrist either with his comments on completeness or, in the event he needed it, a request for a brief extension of time. The matter is placed on the June 17, 2019 agenda for further discussion.

The index for the May 20, 2019 meeting is as follows:

1. Duncan - Area variance - June 17, 2019 (public hearing to commence at 6:00pm, or as soon thereafter as may be heard);
2. Alund - Area variance - Approved with condition.
3. Cornell - Area variance - June 17, 2019 (public hearing to commence at 6:00pm or as soon thereafter as may be heard);
4. Hope Solar Farm - Area variance modification - June 17, 2019 (public hearing to commence at 6:00pm or as soon thereafter as may be heard);
5. Sunmark Federal Credit Union - Area variance - June 17, 2019 (public hearing to commence at 6:00pm or as soon thereafter as may be heard);
6. Blue Sky Towers II/Cellco d/b/a Verizon Wireless - Area variance - June 17, 2019.

The proposed agenda for the June 17, 2019 meeting currently is as follows:

1. Duncan - Area variance (public hearing to commence at 6:00pm or as soon thereafter as may be heard);
2. Cornell - Area variance (public hearing to commence at 6:00pm or as soon thereafter as may be heard);
3. Hope Solar Farm - Area variance (public hearing to commence at 6:00pm or as soon thereafter as may be heard);
4. Sunmark Federal Credit Union - Area variance (public hearing to commence at 6:00pm or as soon thereafter as may be heard);
5. Blue Sky Towers II/Cellco d/b/a Verizon Wireless - Area variance.