

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS SPECIAL MEETING HELD FEBRUARY 6, 2020

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

ABSENT was MARTIN STEINBACH.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

The special meeting of the Zoning Board of Appeals was held for the purpose of discussing the application for area variances submitted by Trifocal Brewing Inc. for property located at 138 Brick Church Road. Chairperson Clemente reviewed the proposed area variances, which include a proposed front yard setback for the structure to be utilized as a proposed craft brewery of 53 feet, whereas a front yard setback of 75 feet is required under the Brunswick Zoning Law; and also the use of an accessory structure that is physically located closer to the front lot line than the primary structure on the lot. It is noted that a public hearing was held and closed on December 16, 2019, and that the applicant had submitted written responses to public comments received during the public hearing through written submission dated January 17, 2020. Chairperson Clemente inquired whether the response to public comments was complete. Attorney Gilchrist stated that, based upon his review of the public comments and the written submission by the applicant dated January 17, 2020, the record on the applicant's response to public comments is complete. Chairperson Clemente inquired whether the responses submitted by the applicant to the public comments had been available to the public. Mr. Golden stated that the January 17, 2020 written submission by the applicant has been available

to the public for review upon request. Chairperson Clemente noted that Alexander Brown was present for Trifocal Brewing Inc., and inquired whether there was any update on the application. Mr. Brown stated that his review with the New York State Department of Transportation regarding the curb cut for his proposed driveway as well as stormwater discharge to the drainage ditch along NYS Route 278 remains pending, and that his review with the Rensselaer County Department of Health concerning the new septic system he is proposing to install also remains pending. Mr. Brown confirmed that he is proposing a small-scale craft brewery with a taproom for on-site consumption and sale; that he is not proposing to operate a restaurant at this location; that the proposed driveway will have a separate entrance and exit point, resulting in two curb cuts on NYS Route 278, but that the driveway will be one-way and will meet standard NYSDOT width for commercial driveways. Member Schmidt asked whether the applicant is proposing to brew a volume of beer greater than that which would be consumed in the tasting room. Mr. Brown stated that this was not likely, noting that the craft brewery might produce a limited amount of beer for off-site sale, but that the majority of the beer produced on the site will be sold for on-site consumption. Member Schmidt asked whether the applicant intended to sell only beer at this location. Mr. Brown stated that it was the applicant's intent to operate a craft brewery, but that under the NYS Craft Brewery License there may be wine or cider offered at the taproom for variety. Mr. Brown also stated that it is possible that people may come to the site to simply fill up a growler and leave, and not stay on site for consumption. Member Schmidt asked about the proposed hours of operation. Mr. Brown stated that he is proposing to operate the craft brewery on Thursdays through Sundays, 11am–9pm. The Zoning Board members inquired about the size of the taproom and patio areas. Mr. Brown stated that the taproom is 700 square feet, with 30 seats proposed; and that the patio area is 20 feet by 47 feet, with 20 seats proposed. Mr. Brown did confirm that only 15 parking spaces are proposed, and considering two occupants per car,

the taproom was sized to include only 30 seats. Member Schmidt stated that he did have a concern regarding the distance of this proposed craft brewery from the public road; that if the craft brewery operation remains small as described by Mr. Brown, he did not have a significant concern; but that if the operation expanded and a large number of people came to this location, he does have a concern because the operation would be close to NYS Route 278 and he has a safety concern if there are a large number of people at this location. Mr. Brown stated that he intended the craft brewery to be a family-friendly destination; that the facility was not designed to have long-term sitting similar to a traditional bar; and further that the owners will monitor patrons. Chairperson Clemente inquired about protection to neighboring properties. Mr. Brown stated that he is proposing to install a six-foot high wooden fence as shown on plan sheet C-7 for buffering to neighboring properties. Chairperson Clemente inquired about vegetation currently in place to provide buffering to neighboring properties. Mr. Brown stated that there was brush along the border and some trees. Chairperson Clemente wanted to confirm that the only access to the craft brewery were through doors located in the front of the building. Mr. Brown confirmed this. Chairperson Clemente again inquired whether the applicant's response to public comments was complete. Attorney Gilchrist stated that, upon his review of the record of public comments and the written responses submitted by the applicant, the record is complete as to responses to public comments, but that the adequacy of the applicant's responses are a Board determination. A member of the public stated that his property would immediately lose 15% of value. Chairperson Clemente stated that the public hearing on the application for area variances had been held in December, and that the property value issue is included in the public comments. Chairperson Clemente confirmed with the Board members that they were prepared to proceed with deliberation on the requested area variances. Chairperson Clemente reviewed the standards for consideration of the area variance requests, including balancing the benefit to the applicant in granting

the area variances as opposed to any detriment to the neighborhood in particular or the Town in general, and reviewed the five factors for consideration in connection with the balancing test. Attorney Gilchrist reviewed the procedural status of the applications, including the public hearing, receipt of applicant written responses to public comments, and the referral of the application to the Rensselaer County Department of Economic Development and Planning and receipt of response indicating that the project does not conflict with County plans and that local consideration shall prevail. Attorney Gilchrist stated that the Zoning Board must first act under the State Environmental Quality Review Act, and determine whether there is the potential for any significant adverse environmental impact from this action. Member Schmidt inquired whether the Zoning Board should consider the proposed use of the building as a craft brewery in relation to its determination under SEQRA as well as consideration of the area variances. Attorney Gilchrist stated it would be appropriate for the Zoning Board to consider the proposed use of the building, and the Zoning Board may also consider appropriate conditions to address any impacts. Chairperson Clemente inquired about how wastewater would be handled at this location. Mr. Brown stated that, in connection with the taproom, a new septic system is being proposed that is under review by the Rensselaer County Department of Health, which would include wastewater from bathroom use as well as dishwashing; regarding the brewery operation, Mr. Brown stated that wastewater would be handled in a holding tank, and that the tank would be located below ground and would be pumped periodically. Chairperson Clemente inquired whether any soil testing had been done for the septic system. Mr. Brown stated that preliminary investigation had been undertaken, and that a mound system is being proposed for the septic system. Mr. Brown stated that the septic plan is shown on pages C-10 and C-11 of the project plans. Chairperson Clemente inquired about the truck needed to pump out the holding tank for the craft brewery liquid waste. Mr. Brown stated that the truck would park in the

front parking lot, and run a hose to the holding tank to empty it similar to a septic tank being pumped. Member Curran inquired as to stormwater runoff from the project site. Mr. Brown stated that he was reviewing his stormwater plan with the New York Department of Transportation, as stormwater from the project site would flow to the drainage ditch along NYS Route 278; that NYSDOT requires a stormwater plan that does not increase the stormwater runoff rate from pre-existing conditions, and that Mr. Brown's stormwater plan includes stormwater mitigation for green infrastructure that meets NYSDOT requirements. Attorney Gilchrist also stated that this project is pending in front of the Brunswick Planning Board for special use permit and site plan review, and that the Planning Board review engineer has reviewed the stormwater plan, and determined that stormwater mitigation is available to meet NYSDOT requirements. Based upon this deliberation, and a review of the environmental assessment form and project application documents, Member Shover made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Schmidt. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board then proceeded to deliberate on the factors to consider in relation to the two area variance requests. As to whether the area variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Schmidt thought that the use of the property as a craft brewery and taproom would impact the character of the area, and all members of the Zoning Board concurred. Attorney Gilchrist did note for the record that there are several existing businesses in this general area of NYS Route 278, including Hewitt Trucking, Rifenburg Construction, Grant Paving, as well as agricultural and residential uses. Attorney Gilchrist also noted that the Building Department determined that the proposed use is allowed in the Business Light Overlay District for this location under the Brunswick Zoning Law. The Zoning Board members considered these points. As to whether the benefit sought through the area variances could be

achieved by a feasible alternative method, Member Shover noted that the building sought to be used as a craft brewery currently exists on the site, and it did not seem that it was feasible to move it and was economically prohibitive to demolish it and build a new structure in compliance with the front setback requirements and located to the rear of the existing primary structure. All members concurred with this finding. As to whether the requested area variances are substantial, Member Shover stated that while the area variances could be viewed as substantial in terms of the front yard setback, the building already exists in its current location and is simply sought to be used for a new use, and that it was not feasible to move the existing building; Chairperson Clemente stated that variances had been granted to continue the use of existing buildings, but these have been in the nature of existing garages where a continued garage use was proposed, whereas this is a new proposed use as a craft brewery and taproom, and that this factors into whether the variance should be deemed substantial; Member Schmidt stated that the front yard setback variance could be viewed as substantial. As to whether the requested variances will have a significant adverse effect on the physical or environmental conditions in the neighborhood, the Zoning Board did note that it adopted a negative declaration under SEQRA, but that the nature of the proposed use would impact the character of the area. As to whether the difficulty requiring the area variances is self-created, the Zoning Board members felt that the need was not self-created as the building already exists; Chairperson Clemente did note that the building is being proposed for a new use, and that Mr. Brown could be charged with knowing the zoning rules when he purchased the property. Chairperson Clemente then stated that the Brunswick Comprehensive Plan and Zoning Law identified the Business Light Overlay District for low intensity commercial uses that co-exist comfortably with existing residences and existing uses; that the Zoning Board should consider the size and character of the proposed use, and the compatibility of that use with the surrounding area; that while the Town of Brunswick is business-friendly, the Town also

seeks to protect farmland and rural lifestyles; that businesses in Brunswick should be appropriately located; that Brunswick seeks to enhance neighborhoods; that the Brunswick Zoning Law does promote mixed uses; and that the Brunswick Zoning Law also seeks to improve existing residential neighborhoods and properties. Member Shover inquired whether the Zoning Board could place conditions on the proposal to mitigate concerns that the Zoning Board has raised, including prohibiting future expansion of the proposed commercial use. Attorney Gilchrist stated that the Board should be considering only the application before it, with the business operations as described by Mr. Brown. Member Shover asked whether prohibiting any increase to off-site sound was appropriate. Attorney Gilchrist stated that the Board could consider prohibiting increases in sound as a condition to any action, if it is supported by evidence in the record. Based upon the application materials, public hearing comments, applicant response to public comments, County review and recommendation, and Zoning Board deliberations, and in balancing the benefit to the applicant in granting the area variances as weighed against any impact to the neighborhood in particular or the Town in general, and in light of the factors discussed concerning that balancing test, Member Schmidt made a motion to grant the requested area variances subject to the following conditions:

1. The hours of operation for the craft brewery are limited to Thursdays through Sundays, 11am–9pm;
2. No increase in sound levels above existing ambient conditions at the property line;
3. No expansion of the commercial operation beyond the current proposal in terms of facilities and services.

Chairperson Clemente wanted to discuss the proposed fence, and adding an additional vegetative barrier for the protection of neighboring properties; while Chairperson Clemente noted a 6-foot wooden fence is proposed, the Zoning Board should consider requiring an additional vegetative

planting on the exterior of the fence along the northerly property line, with the proposed fence being moved in off the property line to allow for vegetation to be planted adjacent to the neighboring properties but still on the Brown parcel; that the vegetation should be required to extend from the NYS Route 278 right-of-way to an area extending near the leach field; the Zoning Board members deliberated on this proposed condition, determining that the additional vegetative planting should extend from the NYS Route 278 right-of-way to an area approximately 50 feet east of the proposed leach field, with the final location to be determined by the Building Department, with evergreens planted with a minimum height of 4 feet, to be replaced if the tree dies within two growing seasons. Based upon these discussions, the Zoning Board added a fourth condition to the motion to grant the area variances as follows:

4. Planting of a vegetative barrier on the exterior of the proposed 6-foot wooden fence on the northern property line, with the fence being moved in to the Brown parcel so the additional vegetation is to be planted on the exterior of the fence adjacent to neighboring properties but located on the Brown parcel; extending from the NYS Route 278 right-of-way to an area approximately 50 feet east of the proposed leach field, with the final location of the vegetation to be determined by the Brunswick Building Department; that the vegetation to be planted is to be evergreens at a minimum height of 4 feet, with any tree that dies within two growing seasons to be replaced by the project owner.

Member Shover seconded the motion with the four stated conditions. The motion was unanimously approved, and the two requested area variances granted subject to the four stated conditions.

The index for the February 6, 2020 special meeting is as follows:

1. Trifocal Brewing Inc. - Area variances - Granted with conditions.