

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS REGULAR MEETING HELD OCTOBER 19, 2020

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, JOHN MAINELLO III, PATRICIA CURRAN., AND JESSICA CHARETTE.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairperson Clemente reviewed the agenda for the meeting as posted on the Town signboard and Town website.

The transcript of the July 20, 2020 meeting was reviewed. Chairperson Clemente noted a typographical error at page 1, the statement by Pat Poletto, 7th line, “Your” should be changed to “You’re”. Chairperson Clemente then made a motion to approve the transcript of the July meeting subject to the typographical correction noted, which motion was seconded by member Curran. The motion was unanimously approved, and the transcript of the July meeting approved subject to the typographical correction.

The first item of business on the agenda was an application for area variances submitted by Travis Wagner for property located at 11 Riccardi Lane. Travis Wagner was present on the application. Chairperson Clemente requested that Mr. Wagner present an overview of the proposal. Mr. Wagner stated that he is seeking to add a garage to the property for storage of vehicles and recreational vehicles, and the proposed location requires a front yard variance, a variance to place the garage closer to the front lot line than the house, and a variance to the size of the garage. Mr. Wagner confirmed that there were no changes to the application. The Zoning Board then opened a public hearing. The Notice of Public Hearing was read into the record, noting that such public hearing notice

was published in the Troy Record, placed on the Town signboard, posted on the Town website and mailed to all owners of property located within 300 feet of the project site. Chairperson Clemente opened the floor for the receipt of public comment. No members of the public wished to provide any comment. Chairperson Clemente confirmed that there were no written comments received by the Brunswick Building Department. Chairperson Clemente inquired whether any Zoning Board members had questions or comments on the application. Hearing none, Chairperson Clemente made a motion to close the public hearing on the Wagner area variance applications, which motion was seconded by member Charette. The motion was unanimously approved, and the public hearing closed. Chairperson Clemente stated that the Zoning Board was ready to proceed with the deliberation on the application, and stated that the Zoning Board would consider all three variance requests together. Chairperson Clemente noted that the application seeks a setback variance and area variance for a residential use, and constitutes a Type 2 action under SEQRA. Chairperson Clemente then reviewed the factors for consideration in the requested area variances. As to whether the requested variances would produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Curran stated that given the location of the house and trees on the lot, no one else would be able to see the proposed garage, and feels there would be no effect on other residences in the neighborhood; Chairperson Clemente agreed that the lot had a number of existing trees creating a vegetative buffer, that the garage would be designed to look like the primary structure, and therefore would fit into the character of the neighborhood. All members concurred. As to whether there was a feasible alternative available to the applicant, Member Curran noted that the lot does have a significant drop-off in the back, and the garage structure could not be moved any further back; Chairperson Clemente agreed that the lot presented a challenging topography and there was not a feasible alternative location available. All members concurred. As to whether

the requested variances are substantial, Chairperson Clemente reviewed the applicable numbers, and stated that the requested variances could be deemed substantial, but given the topography of the lot, there were no other viable alternatives available to allow a garage to be built on the lot. All members concurred. As to whether the requested variances would result in an adverse effect on the physical or environmental conditions in the neighborhood, Member Charette stated that she felt no environmental impact would result, that there were other garages in the neighborhood, and therefore there would be no adverse visual impacts. All members concurred. As to whether the difficulty necessitating the variance was self-created, Chairperson Clemente stated that in this case, the need for the variances was not necessarily self-created due to the extreme topography of the lot. The Zoning Board then balanced the benefit to the applicant in granting the requested variances as opposed to any detriment to the neighborhood in particular or the Town in general, and based on such balance, Member Schimdt made a motion to grant the requested variances, which motion was seconded by Member Charette. The motion was unanimously approved, and the three requested area variances were granted. Chairperson Clemente directed the applicant to continue to coordinate with the Building Department on the installation of the garage at this location.

The next item of business on the agenda was a sign variance application submitted by Hospitality Syracuse Inc. for the Taco Bell restaurant located in the Price Chopper Plaza at 718 Hoosick Road. Tim Freitag of Bohler Engineering together with Mike McCracken of Hospitality Syracuse, were present for the applicants. Mr. Freitag made a presentation regarding the proposal, identifying the free-standing sign; reviewing an aerial photograph showing the location of the restaurant and the proposed location of the sign; confirming that the strip adjacent to the Hoosick Road corridor had been transferred in title to the State of New York; and that given the transfer of this strip of land to the State, the sign variance application had been supplemented to now include a

setback variance, given that the location of the sign would now be 5 feet from the front property line. Mr. McCracken reviewed the applicant's position that the Brunswick Taco Bell location was under performing, comparing the Taco Bell to other restaurants located in Greenport and Fairport; Mr. McCracken confirmed that the five worst performing Taco Bell restaurants in his portfolio were locations where there were no street signage provided; that with the Covid19 restrictions, it would appear that fast food restaurants may be moving towards 100% drive-thru, meaning that the viability of the restaurant will rely more on pass-by traffic, and that no road signage hurts business. Mr. Freitag reiterated that the visibility of the Taco Bell restaurant for eastbound traffic is poor due to the Pioneer Bank location and the fact that the Taco Bell restaurant is at a lower elevation than Hoosick Road; that for cars traveling in a westerly direction, the only thing visible are the text of the Taco Bell sign on the building, and not the Taco Bell "bell" logo, which was more identifiable than the words "Taco Bell". Member Curran inquired what was wrong with the text on the building and why this did not attract customers. Mr. McCracken stated that it has been determined that the Taco Bell "bell" logo is much more effective as cars pass by the location, and that the text is not as recognizable. The Zoning Board then opened a public hearing on the application, including the four requested variances including an additional free standing sign at this location; a total of eight signs for this Taco Bell facility; total sign area of the proposed signage at 178.11 square feet; and a front setback of 5 feet. The Notice of Public Hearing was read into the record, 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. Chairperson Clemente opened the floor for the receipt of public comment. No members of the public wished to provide any comment. Chairperson Clemente inquired of the Building Department as to whether any written comments were received. Mr. Golden stated that the only written comment received was the recommendation

submitted the Rensselaer County Planning Department, indicating that the application did not conflict with County plans and that local consideration shall prevail. Hearing no further comments from the public, Chairperson Clemente made a motion to close the public hearing on the Taco Bell sign variance application, which motion was seconded by Member Charette. The motion was unanimously approved, and the public hearing closed. Chairperson Clemente inquired whether there were any questions or comments from the Zoning Board members. Member Schmidt asked Attorney Gilchrist whether granting the sign variance application would serve as any precedent for any other tenants in the Price Chopper Plaza to also request a sign variance. Attorney Gilchrist stated that the determination on the Taco Bell sign variance application would be relevant on any future sign variance requests from tenants at the Price Chopper Plaza; that the Zoning Board does need to act consistently with prior determinations; and that while the decision on the Taco Bell sign variance application would be relevant, it would not necessarily be determinative on any future application as each application needs to be addressed on its own merits and own facts. Member Charette stated that in her opinion, the Taco Bell sign variance application was different from any of the interior businesses since the Taco Bell restaurant relied more on pass-by traffic, including interstate traffic, whereas interior businesses in the plaza would be subject to more local traffic; Member Charette acknowledged the problem of visibility for the Taco Bell restaurant at this location, especially for pass-by traffic, stating that cars that had already passed by the Taco Bell restaurant would not turn around but rather had a number of other options, including Burger King, Dunkin Donuts, and McDonalds. Member Mainello asked whether the sign variance application would be specific to Taco Bell or would run with the land. Attorney Gilchrist stated that the sign variance would not be specific to Taco Bell, but rather would be granted to the mall owner which would allow a sign to be in that location regardless of specific tenant. Member Curran asked Mr. Freitag whether his office had

prepared a visual of what the proposed sign would look like when travelling in a westerly direction on Hoosick Road, and whether the sign would work in terms of whether it could be easily seen. Mr. Freitag stated that the issue had been analyzed, that the visibility of the Taco Bell restaurant would be improved with the signage, that a 20 foot pole sign would be preferable but the monument-style sign is being proposed to be more consistent with the existing signage in that area of the Hoosick Road corridor. Chairperson Clemente asked whether the real estate rental signage would be removed if this sign variance was granted. Mr. Freitag stated that the real estate sign was temporary, and that the property owner would need to discuss that issue with the Building Department. Mr. Freitag also stated that in terms of precedent, it was in his opinion that there was no further area along this stretch of the Hoosick Road corridor for more signage, given the existing signage for Pioneer Bank, Sunmark, and the existing Price Chopper Plaza monument sign. Member Mainello asked whether the text of the Taco Bell sign would be fixed to be consistent with the current application, or whether the text of the sign could be changed in the future. Attorney Gilchrist stated that Taco Bell would be allowed to change the text of the sign in the future, and that the variance request was for the sign structure itself, including location and size. Hearing no further questions or comments from the Zoning Board members, Chairperson Clemente stated that the Zoning Board would need to make a determination under SEQRA on this application. Thereupon, Chairperson Clemente made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Mainello. The motion was unanimously approved, and a SEQRA negative declaration adopted. Chairperson Clemente then stated that the Zoning Board would address all requests to variance on this sign application together. As to whether the requested sign variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Charette stated that she felt there would be no change to the character of the area; that this was a commercial district; and that the

proposed signage would be consistent with other signage along the Hoosick Road corridor. All members concurred. As to whether there was a feasible alternative available, Member Charette stated that she did not feel there was a viable alternative other than a much taller pole sign, and that the proposed monument sign was preferable. All members concurred. As to whether the requested variances were substantial, Member Schmidt stated that in his opinion, the requested variances are substantial but that the location of the sign would be an adequate distance from the current traveling lanes on Hoosick Road. Attorney Gilchrist noted that the purpose of the transfer of land to the State of New York was for the potential future widening of Hoosick Road in this area to maintain two lanes traveling in an eastbound direction and the Zoning Board should consider that factor in its determination. As to whether the proposed variances would result in an adverse effect on the physical or environmental conditions in the neighborhood, all Zoning Board members concurred that no negative impact would result, particularly since the corridor has existing commercial signage similar to what is being purposed. As to whether the need for the variance is self-created, the Zoning Board members confirmed that in their opinion the need was self-created, but felt it was not determinative on this application. It was noted that the recommendation of the Rensselaer County Planning Department had been received, noting that the application did not conflict with County plans and that local consideration shall prevail. In balancing the benefit to the applicant in granting the sign variance as opposed to any detriment to the neighborhood in particular or Town in general, Member Charette made a motion to grant the requested sign variances subject to the condition that the property owner must coordinate with NYS DOT regarding the sign location in the future in the event that NYS DOT added a travel lane in the area of the land donation to the State of New York. The motion was seconded by Member Mainello. The motion was unanimously approved, and the sign variances

granted subject to the stated condition. Chairperson Clemente directed the applicant to continue to coordinate with the Building Department on the sign application.

The next item of business on the agenda was an area variance application submitted by Thomas Sheehan for property located at 29 Norfolk Street. Thomas Sheehan was present on the application. Chairperson Clemente requested that Mr. Sheehan provide an overview of the proposal. Mr. Sheehan stated that he is looking to construct a pool with deck in his back yard, resulting in a rear yard set-back of 9 feet whereas the Town code requires 20 feet. Mr. Sheehan did note that the property to the rear is vacant and an old cow pasture. The Zoning Board then opened the 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. Chairperson Clemente opened the floor for the receipt of public comment. No members of the public wished to provide any comments. Chairperson Clemente inquired whether the Building Department had received any written comments on this application. Mr. Golden stated no written comments had been received. Chairperson Clemente inquired whether there were any questions or comments from the Zoning Board members. Hearing none, Chairperson Clemente made a motion to close the public hearing on the Sheehan area variance application, which motion was seconded by Member Charette. The motion was unanimously approved, and the public closed. Chairperson Clemente stated that the Zoning Board was prepared to deliberate on the application. Chairperson Clemente noted that the application seeks an area variance and setback in connection with a residential application, constituting a Type II action under SEQRA. As to whether the requested variance would result in an undesirable change in the character of the neighborhood or a detriment to nearby properties, the Zoning Board members stated that the proposed location of the pool and deck line up with the house

line, would not be visible from the front of the lot, and was consistent with other back yard pools in the neighborhood. As to whether a feasible alternative was available to the applicant, the Zoning Board members confirmed that the proposed use was to maximize usable space on the property, which also included landscaping, and that the deck and pool fits into the lot as well as the general neighborhood; Member Schmidt also stated that the applicant had looked into buying additional land to eliminate the need for a rear setback variance, but that the purchase of land was not available. As to whether the requested variance was substantial, the Zoning Board members concurred that on the numbers on the variance could be viewed as substantial but that it was relevant that the lot backs up to a vacant field. As to whether the requested variance would result in an adverse effect on the physical or environmental conditions in the neighborhood, the Zoning Board members found no adverse impacts. As to whether the need for the variance was self-created, the Zoning Board members did find that the need was self-created, but did not find that factor to be determinative on this application. In balancing the benefit to the applicant in granting the variance as opposed to the detriment to the neighborhood in particular or Town in general, and noting that the requested rear yard setback variance was from the required 20 feet to the proposed 9 feet, Member Curran made a motion to grant the requested variance, which motions was seconded by Member Charette. The motion was unanimously approved, and the area variance granted. Chairperson Clemente directed the applicant to continue to coordinate with the Building Department on the pool installation.

The next item on the agenda was an area variance application submitted by James Lattimore and Kathy Martin for property located on 1 Seneca Street. James Lattimore was present on the application. Chairperson Clemente requested a review of the proposal. Mr. Lattimore stated that the house at this location was non-conforming under the current Brunswick Zoning Law, and accordingly, variances were required for a front yard setback as well as a side yard setback for the

installation of a deck and an additional roof over an existing deck. Mr. Lattimore confirmed that there were no changes to the application. The Zoning Board opened up the public hearing on the application. The Public Hearing Notice was read into the record, noting that the Public Hearing Notice had been published in the Troy Record, placed on the Town sign board, posted to the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente opened the floor for the receipt of public comment. No members of the public wished to provide any comment. Chairperson Clemente inquired whether any written comments had been received by the Building Department. Mr. Golden stated that the only written comment received was from the Rensselaer County Planning Department stating that the proposal did not conflict with County plans and that local consideration shall prevail. Chairperson Clemente inquired whether there were any questions or comments from the Zoning Board members. Hearing none, Chairperson Clemente 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. Chairperson Clemente stated that the Zoning Board was prepared to deliberate on the application, and would consider the two requested variances together. Chairperson Clemente noted that this application sought setback variances for a residential project, and constituted a Type II action under SEQRA. As to whether the requested variances would result in an undesirable change to the character of the neighborhood or create a detriment to nearby properties, Chairperson Clemente noted that the proposed construction was consistent with residential use on the lot as well as consistent with other uses in the neighborhood. All members concurred. As to whether a feasible alternative existed, Chairperson Clemente noted that the variances were needed simply because the existing home is non-conforming under the current Brunswick Zoning Law, and felt that in this case, there were not any feasible alternatives available to the applicant. The Zoning Board members concurred. As to whether

the requested variances were substantial, the Zoning Board members did find the variance requests were substantial, but noted they arose from the fact that the existing home is non-conforming under the current Brunswick Zoning Law. As to whether the variances would result in any adverse effect on the physical or environmental condition of the neighborhood, the Zoning Board members concurred that there would be no adverse impact. As to whether the need for the variances was self-created, the Zoning Board members identified the fact that the existing house is deemed non-conforming under the current Brunswick Zoning Law, and that this created a need for the variances. In balancing the benefit to the applicant in granting the variances as opposed to the detriment to the neighborhood in particular or the Town in general, Member Charette made a motion to grant the requested variances, which motion was seconded by Member Curran. The motion was unanimously approved, and the requested variances granted. Chairperson Clemente directed the applicant to continue to coordinate with the Building Department on this project.

The next item of business on the agenda was the area variance application submitted by Penny Silliman for property located at 29 Killock Avenue. Penny Silliman was present on the application. Chairperson Clemente requested that Ms. Silliman present an overview of the project. Ms. Silliman stated that she was proposing to install a steel garage on a cement slab at this location to store vehicles, and that there were no changes to the application. The Zoning Board noted that this application seeks two area variances for front yard setback as this is a corner lot. The Zoning Board opened up the public hearing on the application. The Public Hearing Notice was read into the record, noting that the Public Hearing Notice had been published in the Troy Record, placed on the Town sign board, posted to the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente opened the floor for the receipt of public comment. No members of the public wished to provide any comment. Chairperson Clemente inquired whether any written

comments had been received by the Building Department. Mr. Golden stated that the only written comment received, was from the Rensselaer County Planning Department, stating that the application did not conflict with County plans and that local consideration shall prevail. Chairperson Clemente inquired whether there were any questions or comments from the Zoning Board members. Hearing none, Chairperson Clemente made a motion to close the public hearing, which motion was seconded by Member Charette. The motion was unanimously approved, and the public hearing closed. Chairperson Clemente stated that the Zoning Board was prepared to proceed with deliberate on the application. Chairperson Clemente noted that this application seeks an area variance for a residential project, constituting a Type II action under SEQRA. As to whether the requested variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, the Zoning Board members concurred that there were other garages located on residential lots in this neighborhood, and that this proposal would fit into the general character of the neighborhood. As to whether there was a feasible alternative available to the applicant, the Zoning Board members concurred that the fact that this was a corner lot made the location of the garage difficult to meet all required setbacks, and did not feel there was a feasible or viable alternative available. As to whether the requested variances were substantial, the Zoning Board members did find the variances substantial on the numbers, but did note that the garage does fit best on the lot at the proposed location, with a flat topography, with good access onto Killock Avenue. As to whether the variances would result in an adverse effect on the physical or environmental conditions in the neighborhood, the Zoning Board members concurred that there would not be an adverse impact. As to whether the difficulty giving rise to the need for the variance was self-created, the Zoning Board members did find the variance need self-created, but felt that this was not determinative on this application. In balancing the benefit to the applicant in granting their requested variances as opposed

to the detriment to the neighborhood in particular or the Town in general, Member Schmidt made a motion to grant the variances, which motion was seconded by Member Churette. The motion was unanimously approved, and the requested area variances granted. Chairperson Clemente directed the applicant to continue to coordinate with the Building Department on the garage installation.

The next item of business of the agenda was the area variance at locations submitted by HDIGSL, LLC for property located at 394 Pinewoods Avenue. Chairperson Clemente noted that the public hearing on this application had been held during a joint meeting with the Planning Board on October 15, and that the public hearing had been closed. Darren Palmetto was present for the applicant. Mr. Palmetto stated that there were no additional structures being proposed, it was simply seeking to have the existing accessory apartment as well as the existing accessory apartment structure and an existing shed come into compliance with the requirements of the Brunswick Zoning Law. Chairperson Clemente confirmed that no new construction was being proposed. Chairperson Clemente stated that the Zoning Board was prepared to deliberate on the requested area variances. Chairperson Clemente noted that the application seeks a setback variance for a residential project, constituting a Type II action under SEQRA. Chairperson Clemente also noted that the Zoning Board would address both requested variances together. As to whether the requested variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Curran stated that there would not be any negative effects since no changes were being proposed, and that the applicant was simply trying to have the existing structures uses brought into compliance with Brunswick Zoning Law. All members concurred. As to whether a feasible alternative existed, the Zoning Board members concurred that there were no alternatives even being considered, as these are existing structures and uses. As to whether the requested variances were substantial, the Zoning Board members found the variance numbers to be substantial, but noted that

the structures already exist, and that the applicant is seeking to have the property come into compliance. As to whether there was any adverse physical or environmental impact, the Zoning Board members found no adverse impact since no new construction was being proposed. As to whether the need for the variance was self-created, the Zoning Board members determined that the current owner did not construct these structures but simply purchased the property in its current condition and use, and was looking to bring the property into compliance with the Brunswick Zoning Law, and felt that these facts were relevant on this element. In balancing the benefit to the applicant in granting the area variances as opposed to the detriment to the neighborhood in particular or the Town in general, Member Curran made a motion to grant the requested variances, which motion was seconded by Member Churette. The motion was unanimously approved, and the two area variances were granted.

One item of new business was discussed.

An application for area variance has been submitted by Gina Debonis for property located at 112 Seneca Street. The applicant seeks to install an in-ground pool on an existing pie-shaped lot, which is also a corner lot with two front lines requiring compliance with two front setbacks. Ed Inglis, as agent for the applicant, was present. Mr. Inglis stated that they had tried to position the pool in the best location on the lot, which could meet one front setback requirement but could not meet the second front line setback, requiring the front line setback application. Mr. Golden confirmed that this was pie-shaped corner lot with two front lot lines, and that the applicant had done the best job in trying to position the pool on the lot. Upon review of the application materials, the Zoning Board Members deemed the application to be complete, and scheduled the public hearing on this application for the 11/16/2020 meeting at 6 pm. The applicant confirmed consent to access the site, with Mr. Inglis stating that he has already staked out where the pool would be located.

The Index for the October 19, 2020 meeting is as follows:

1. Wagner - area variances - granted
2. Taco Bell - sign variance - granted with condition
3. Sheehan - area variance - granted
4. Lattimore - area variance - granted
5. Silliman - area variance - granted
6. HDIGSL, LLC - area variance - granted
7. Debonis - area variance - November 16, 2020 (public hearing to commence at 6pm)

The proposed agenda for the November 16, 2020 currently is as follows:

1. Debonis - area variance (public hearing to commence at 6pm)
2. Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless - use variance and area variance
3. Leon - use variance and area variance (tentative)
4. Rashid - area variance (tentative)