

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 DECEMBER 21, 2020**

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, PATRICIA CURRAN, and ANDY MORIN.

ABSENT was JOHN MAINELLO III.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

The draft minutes of the November 16, 2020 meeting were reviewed. Chairperson Clemente noted that the name of Ed Inglis, who was present representing the first applicant on the agenda, was misspelled on pages 2-7 and must be corrected. Member Curran made a motion to approve the minutes of the November 16, 2020 meeting subject to the noted correction, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the minutes of the November 16, 2020 meeting were approved subject to the noted correction.

The first item of business on the agenda was the area variance application submitted by Joshua Laiacona for property located at 59 Tambul Lane. It was noted that the public hearing on the Laiacona area variance application scheduled for this meeting would not be held due to an error on the Notice of Public Hearing, which listed the address of the project site as 9 Tambul Lane instead of 59 Tambul Lane. It was suggested that a special meeting be held in January 2021 to hold the public hearing on this matter. Since the third Monday of the month, when Zoning Board of Appeals meetings are held, is Martin Luther King Day, a federal holiday, the Zoning Board's regular meeting will be on Monday, January 25. It was therefore decided that a special meeting

would be held on January 11, 2021 and the public hearing on the Laiacona application will be held at that meeting at 6:00 pm.

The second item of business on the agenda was the use variance application submitted by Ruth Gorton for property located at 3 Crescent Lane. The applicant seeks to create an accessory apartment in their home, which is located in a Business Light zoning district. Ruth and Martin Gorton were present. Chairperson Clemente requested the applicants review the proposal. Mr. Morton stated that there have been no changes to the project since it was last presented to the Zoning Board. Mr. Gorton stated that a room in the house previously served as a law office, but for several years the former law office space had been added to the rest of the house. Now, the Gortons seek to convert the former law office space into an accessory apartment or Airbnb. Chairperson Clemente then opened the public hearing on the application. Eleanor Bode, who lives at 6 Crescent Lane, said that she is neighbors with the Gortons and has no objection to the project. Carol Stark, who lives at 29 Grange Road, also identified herself as a neighbor of the Gortons and said she has no objections to the project and that the Gortons will make good landlords. Chairperson Clemente asked Mr. Golden if the Building Department had received any written comments on this application and he said they had not. Member Curran asked the applicant if the occupancy of the house would exceed six people if the project were approved. Mr. Gorton confirmed that the maximum number of people in the house would be six, with only one or two being in the apartment. He also said that three people live in the house now. Chairperson Clemente asked about parking at the project site, specifically saying that she has noticed that people living in the house are parking across the street and that if the property across the street were to be developed, would the increased number of cars at the house have adequate parking? Mr. Gorton stated that there would be adequate parking on his lot for any additional cars. Chairperson

Clemente asked if the tenant would use a separate entrance to get into the house. Mr. Gorton confirmed that a separate entrance would be used to access the apartment. Chairperson Clemente asked if there will be a sidewalk to the entrance to the proposed apartment. Mr. Gorton stated that a sidewalk will be installed on the property. Chairperson Clemente asked whether the tenant would be sharing the kitchen in the main house. Mr. Gorton confirmed that the tenant would not be using the kitchen in the main house, and that a smaller kitchen would be installed in the apartment. He then showed the board members pictures on his phone of the interior of the space inside the house that would be converted to the proposed apartment. Chairperson Clemente asked the applicant to confirm that they are seeking a use variance. Mr. Gorton confirmed that they are seeking a use variance, stating that the property is located in a Business Light zoning district; the property had previously been zoned residential, but was rezoned to Business Light when the Zoning Law was adopted in 2017, and now that the applicant is seeking to put a new apartment in the house, a use variance is necessary. Chairperson Clemente then reviewed the use variance standards, as stated in the Town of Brunswick Zoning Law, Article 17, Section 160.129, "Use Variances." Attorney Gilchrist then reviewed the legal standards for a New York municipal board granting a use variance, citing New York State Town Law Section 267-b, "Permitted action by board of appeals." Chairperson Clemente stated that based on the New York State legal standards, a use variance can only be granted if restrictions are causing an unnecessary hardship, and that the hardship must be on the land, not the landowner. Additionally, Chairperson Clemente stated that an economic hardship being faced by the landowner does not constitute an unnecessary hardship, and that the applicant must show that it cannot achieve a reasonable economic return on the property for any of the current allowable uses in the zoning district. Chairperson Clemente asked to keep the public hearing on the application open and that the application would be placed on the agenda for the

January 25, 2021 meeting. Chairperson Clemente requested that applicant submit further information to the Zoning Board summarizing the unnecessary hardship the applicants are currently facing that necessitates the use variance. Chairperson Clemente made a motion to keep the public hearing open and Member Schmidt seconded. The motion was unanimously approved and the public hearing was kept open. This matter is placed on the agenda for the Zoning Board's regular meeting in January.

The third item of business on the agenda was the use and area variance application submitted by Blue Sky Towers III, LLC and Cellco Partnership d/b/a Verizon Wireless, for property located on Creek Road. The applicant seeks to construct an 85-foot monopine cell tower on the property. David Brennan, Esq., of the Young Sommer Law Firm was present representing the applicant. Ronald Laberge, P.E., the Town designated engineer, was also in attendance. Mr. Brennan noted that the Town of Brunswick Planning Board has not taken action on the project yet as their meeting on December 17, where the Planning Board was expected to make a SEQRA determination, was cancelled due to weather. Mr. Brennan agreed to give a brief summary of the project and its history for the new members of the Zoning Board. The application was first submitted before the Town's new Zoning Law was passed in 2017, after which the zoning district of the location of the proposed cell tower was changed. The current application was submitted in 2019. The Planning Board designated itself as lead agency under SEQRA for this application and is currently going through environmental review. In January 2020, the Zoning Board and Planning Board held a joint public hearing on the application and the applicant responded in writing to all comments made at that hearing. The applicant also submitted further information on the project to the Zoning Board. The project initially proposed a 150-foot tower, with alternative locations for an 85-foot tower and a tower over 200 feet in height. The applicant conducted visual analysis of

the project site with a balloon and a drone. The proposal was later changed to build an 85-foot stealth tree as the cell tower, with the Planning Board providing feedback. The applicant considered both 85-foot and 95-foot pole locations for the monopine tower, and selected the location for the 85-foot monopine tower. Mr. Brennan requested the application be placed on the agenda for the Zoning Board's January 25, 2021 meeting as he anticipates that the Planning Board will have made its SEQRA determination by that time. Once the Planning Board makes its SEQRA determination, the Zoning Board can act on the use variance application. Attorney Gilchrist then reviewed the Rosenberg standard, stating that in order for a use variance for a cell tower to be granted, there must be a need for the tower as shown by a gap in service area, and that the wireless communication facility would close that gap, that reasonable alternative locations are not available, and that the facility will not significantly impair the community. Mr. Laberge agreed with that assessment of the Rosenberg standard. Mr. Brennan confirmed that alternative sites had been considered and Mr. Laberge listed them. Mr. Brennan stated that an 85-foot monopine tower was selected because it was the lowest height that will effectively close the gap in service. He also repeated that it will be a stealth tree, meaning it will be designed to blend into the other trees on the property, and will be out of view of most homes. Chairperson Clemente asked if the remainder of the farmland on the property would stay agricultural and remain actively farmed. Mr. Brennan confirmed that it would be, that the farmland is currently being used to harvest corn and that he believes it will remain that way. Mr. Brennan also stated that there will be an access road on the property that hugs the property line and tree line, which will keep the land open for agricultural use. Chairperson Clemente asked where specifically the fence mentioned in the application will be located. Mr. Brennan stated that the fence will be a razor wire fence with a base running along the driveway that will only go around the wireless communication facility, which is 50-feet by 50-

feet. There will be a gate on the road at the entrance to the facility instead of a fence. Mr. Brennan stated that the fence will 6-8 feet and Mr. Laberge stated that it will be 8 feet with 1 foot of barbwire along the top. Chairperson Clemente asked how the project will avoid deer getting caught up in and injuring themselves on the fence. Mr. Laberge said that he has never seen deer injuring themselves on the fence surrounding a wireless communication facility and Mr. Brennan added that it likely won't be a problem due to the height of the fence. Chairperson Clemente asked if a row of trees would be installed as a visual barrier. Mr. Brennan confirmed that they would, that evergreen trees would be off-set from the monopine tower and that they could be adjusted based on Laberge's recommendation. Mr. Brennan also stated that a noise survey has been done, which was sent to and has been reviewed by Laberge. Mr. Brennan said that the site will use generators, but they will only be used in emergencies. Otherwise, the generators will only be active for 20 minutes per week in order to confirm that they are still working properly. Mr. Brennan then said that there were initially three levels on the tower proposed, but this has since been amended to two levels as only Verizon and AT&T will be using the tower. Chairperson Clemente asked for clarification on the construction hours while building the tower. Mr. Brennan stated that construction will take place from 8:00-5:00 on weekdays. Post-construction, there is no set schedule as routine maintenance could be done at any time. Specifically, maintenance would include mowing the grass, plowing snow, road repair, etc., and the site would be inspected 3-4 times per year. Mr. Brennan said that the applicant could add a statement to the application specifying that repairs can only be done during daytime hours. Mr. Brennan also said that the tower would have a 25-watt floodlight at the base of the tower in case work needs to be done when it's dark and that there will be no lights at the top of the tower. Member Morin asked if there would be indicators on the tower for small planes, as the Poestenkill airport is near the project site. Mr.

Brennan that there are not indicator lights on the tower as it is not required by law and the 85-foot tower will barely be above the existing tree line. Chairperson Clemente asked if the artificial branches placed on the tower could be damaged by high winds. Mr. Brennan said that the tower will be designed to withstand the amount of wind, rain, and snow that New York receives. He also said that the tower will undergo regular maintenance and that if any artificial branches do break off or deteriorate, new branches can be attached. Chairperson Clemente asked if the Zoning Board could incorporate conditions requested by the Planning Board even if they were not necessary or pertinent to the variance. Mr. Gilchrist stated that the Zoning Board must consider conditions relevant to its variance jurisdiction, but indicated that municipal boards often incorporate other board's conditions as a matter of course. Chairperson Clemente asked if the historical report compiled by the applicant had been sent to the Town Historian. Mr. Golden stated that it was. Mr. Laberge stated that the historical report is part of the application's Cultural Resources/Historical Assessment section and that comes from the federal level of review. Mr. Brennan stated that in terms of federal licenses for the project, federal review is required and that SHPO will be involved with that process. Mr. Brennan then said that a letter requesting another shot clock extension had been sent to Mr. Gilchrist, who will review it with the Planning Board and Zoning Board of Appeals chairs. Mr. Brennan again requested that the application be placed on the January 25, 2021 agenda. This matter is placed on the January 25 agenda for further discussion.

The fourth item of business on the agenda was the area variance submitted by Usman Rashid for property located at 793 Pawling Avenue. The applicant seeks approval to construct a new building on the property, which requires a rear lot line variance and a front lot line variance along Lakeview Avenue. Mark Danskin was present to review the project. Ronald Laberge, P.E., the Zoning Board's designated review engineer, was also present. Chairperson Clemente began by

reviewing the Reeves report submitted by the applicant, and the review letter from Laberge Group. Mr. Danskin stated that the last appearance on this application was July 2020. He then reviewed the area variance, stating that it concerned two sideline setbacks, one on the Lakeview side and the other along the rear lot line. Mr. Danskin stated that the main issue was the integrity of the foundation wall along the rear property line in terms of the impact to adjoining properties and overall safety. Mr. Danskin then reviewed the Reeves report. Mr. Gilchrist reviewed the procedural status of the application, and the technical issues that the Zoning Board required to be addressed by the Reeves report and reviewed by Laberge Group. Member Morin asked if a reinforcement wall made of matt slab and pilaster was still planned to be built. Mr. Danskin confirmed that the reinforcement wall be built and will strictly be used as a retaining wall. Mr. Laberge added that the wall will have no weight placed on it. Mr. Laberge then reviewed technical issues with the application. Chairperson Clemente asked about the existing walls and the analysis of those walls used as retaining walls. Mr. Laberge confirmed that the existing walls would remain and will be used for retaining purposes. Member Curran asked if any use of the property would require upgrades and maintenance of the foundation wall. Mr. Danskin said it would. Chairperson Clemente asked how the rear setback was zero feet. Mr. Danskin stated that the building was built inside the existing wall, but they need zero feet to allow for the eave and gutter system. Mr. Gilchrist reviewed the variance element of detriment to offsite property, as well as the responses submitted by the applicant to the public comments. Chairperson Clemente asked about the applicant's response to public comments. Mr. Danskin reviewed the response letter submitted by Attorney Blandell. Member Curran said that she would have preferred the applicant respond to each public comment, rather than a generalization, and that the response must be complete and submitted in the form of a letter. Member Schmidt agreed. Member Morin said that he found the

response letter to be very general. Chairperson Clemente said that the applicant should resubmit the response to public comments in the form of a letter that addresses each public comment received at the public hearing, and that the applicant can use the transcript of the Zoom meeting where public comments were made on the project, which is available on the Town website. This matter is placed on the January 25 agenda for further discussion.

The fifth item of business on the agenda was the use and area variance submitted by David Leon for property located at 660 Hoosick Road. The applicant seeks approval to construct two fast food drive-thrus and a grocery store. Jamie Easton, P.E. was present to review the project. Mr. Easton stated that a joint public hearing with the Zoning Board and Planning Board was held on the project back in October, after which there was a period of four weeks where written comments on the project could be submitted. The applicant has submitted a 99-page response letter addressing these comments. Technical comments on the project were addressed at a previous Planning Board meeting. Mr. Easton then explained that the applicant is seeking two area variances: the first for a drive-thru near the Hoffman Car Wash, which was granted previously, and the second is for a parking lot in an R-9 zone, which also requires a use variance. The area variance for the parking lot was not initially applied for by the applicant, but added later at the request of the Planning Board at one of their August meetings. Mr. Easton stated that there were many comments the applicant responded to in their letter, but only one comment addressed concerns about the area and use variances themselves, specifically the location of a dumpster on the project site. Mr. Easton stated that the project calls for a dumpster to be placed only 178-feet from a house on Hillcrest Avenue, which would not be allowed under current zoning. However, a dumpster at the Cumberland Farms next to the project site has a dumpster that is only 150-feet away from the exact same house on Hillcrest Avenue. Chairperson Clemente asked if the applicant had an economic

hardship statement for the project. Mr. Easton stated that he did not. However, he did state that in an R-9 zone, parking is allowed with a principal building and since there will be no principal building on the property, a use variance is being sought. Mr. Easton also stated that parking in the R-9 zone area should be allowable on the project site as it is only 2,000 square feet and has an adequate buffer to surrounding properties. Member Curran asked what the impact on the project site would be if parking was eliminated. Mr. Easton said that the parking being proposed in the R-9 zone is minimal, and that the project would still be compliant with Town of Brunswick zoning without the parking in the R-9 zone. He reiterated that the Planning Board requested the extra parking on the project site. Mr. Golden brought up the amount of parking available at the Planet Fitness concurrently, comparing it to the parking being proposed on the proposed site plan. Chairperson Clemente asked about people using the parking lot as a travel lane from Hillcrest Avenue to Hoosick Road. Mr. Easton stated that it is likely to happen, stating that using parking lots as travel lanes happens all the time, such as at big box stores. Member Curran noted that people using with parking lot as a travel land would noticeably increase the amount of total traffic in the parking lot. Mr. Easton agreed, but again stated that this happens all the time in the parking lots of big box stores. Mr. Gilchrist reviewed the procedure for moving forward with the application, stating that a SEQRA determination must be made by the Planning Board first. Member Curran asked about the width of the road to the rear area of the property, which is 26 feet, questioning if it needs to be a one-way road. Mr. Easton stated that the road on the applicant's property is 26-feet wide and is a two-way street, but that there is also a 16-foot wide paper street on the property that is proposed to be one-way. Mr. Easton also noted that the NYS DOT wants side-road interconnections on the project site, per the overall NYS DOT comprehensive plan. Chairperson Clemente said that after reviewing all the comments on the project, there is clearly an overall

mistrust of the developer. Due to this, she asked what the applicant's intentions are concerning the rear land on the parcel, asking if it could be open space deemed "forever wild." Mr. Easton stated that making the rear area forever wild does not make sense economically and that the landowner will very likely develop that area at some point in the future in order to recoup project costs. Mr. Easton also commented that the applicant could dust off its prior application for apartments on the rear area of the parcel, or could submit an application for a different project. Mr. Gilchrist again reviewed the procedural requirements for the project, stating that the Planning Board must first make a SEQRA determination on the project before the Zoning Board can act; should the Zoning Board approve the variances, the project would return to the Planning Board. Chairperson Clemente noted that no additional information was needed on the variances. This matter is placed on the January 25 agenda for further discussion.

Two items of new business were discussed.

The first item of new business discussed was a use variance submitted by Peter and Bonny Lupe for property located at 4112 NYS Route 2. Mr. Lupe presented an overview of the application. The property has been used as a daycare center for the last seven years, but the previous tenant was forced to close the business earlier this year due to the COVID-19 shutdown. The property was leased to a new tenant who intends to also operate a daycare center on the property and purchased all the equipment and furniture from the previous tenant to do so. However, there are zoning issues with the property that have recently been discovered, specifically that daycare centers are not allowed in an A-40 district. The previous tenant's daycare was previously licensed by New York State and had a CO from the Town. However, New York State is now refusing to license the new tenant's daycare due to the zoning issue. Chairperson Clemente asked if costs are being incurred by the tenant. Mr. Lupe said yes, by both the new tenant and the owners.

Member Morin noted that the previous tenant's daycare began operation in 2014 and asked if it was properly zoned at that time. Mr. Lupe said it wasn't, but NYS approved the daycare and the Town issued a CO anyway. Chairperson Clemente asked the applicant to confirm that no new construction is being proposed. Mr. Lupe confirmed no new construction. Mr. Lupe stated that in terms of an economic hardship, the owners are not collecting rent from the new tenant as the new tenant cannot operate their business until the zoning issue gets resolved. The Zoning Board did request additional information on economic hardship, but deemed the application complete for purpose of scheduling the public hearing. A public hearing on this application is scheduled for January 11, 2021 at 6:15 pm.

The second new item of new business discussed was an area variance submitted by Joseph Millington Jr. for property located at 7 Howe Lane. The applicant seeks approval for an inground pool, specifically looking for a variance from the 25-foot setback requirement as they want just a 10-foot setback. The applicant had been considering installing a pool for many years, but is only moving forward now due to removing diseased trees and opening up space for a pool. Chairperson Clemente stated that the application was complete. A public hearing on this application is scheduled for January 25, 2021 at 6:15 pm.

The index for the December 21, 2020 meeting is as follows:

1. Gorton – use variance – January 25, 2021 (public hearing to continue).
2. Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless – use variance and area variance – January 25, 2021.
3. Rashid – area variance – January 25, 2021.
4. Leon – use variance and use variance – January 25, 2021.
5. Lupe – use variance – January 11, 2021 (public hearing to commence at 6:15 pm).

6. Millington – area variance – January 25, 2021 (public hearing to commence at 6:15 pm).

The proposed agenda for the January 11, 2021 meeting currently is as follows:

1. Laiacona – area variances (public hearing to commence at 6:00 pm).
2. Lupe – use variance (public hearing to commence at 6:15 pm).

The proposed agenda for the January 25, 2021 meeting currently is as follows:

1. Gorton – use variance (public hearing to continue at 6:00 pm).
2. Millington – area variance (public hearing to commence at 6:15 pm).
3. Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless – use variance and area variance.
4. Rashid – area variance.
5. Leon – use variance and use variance.