

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD January 13, 2014

PRESENT were JAMES HANNAN, E. JOHN SCHMIDT, CAROLINE TRZCINSKI and MARK BALISTRERI.

ABSENT was MARTIN STEINBACH.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

Given the absence of Chairman Steinbach, Member Trzcinski made a motion to designate Member Hannan as the Acting Chair for the meeting, which was seconded by Member Schmidt, and was unanimously approved.

The members of the Zoning Board reviewed the draft minutes of the December 16, 2013 meeting. Upon motion of Member Trzcinski, seconded by Member Schmidt, the minutes of the December 16, 2013 meeting were unanimously approved without amendment.

The first item of business on the agenda was the public hearing scheduled on the application of Peter St. Germain, 490 McChesney Avenue Extension, seeking an area variance for the installation of a garage. Attorney Tingley read the notice of public hearing and noted that the notice had been published in the Troy Record on December 25, 2013 and had been posted on the Town's website and the Town sign board, as well as having been sent to the neighboring property owners. The Applicant was present for the public hearing. The Applicant submitted a more detailed sketch plan showing the location of the septic tank, septic lines, and leach fields in relation to the existing driveway and proposed garage location. Member Schmidt asked the Applicant whether he currently drives over and parks above the septic tank, which is shown on

the schematic as being located in the existing parking area. The Applicant responded that he does drive over the septic tank but that the septic tank is reinforced with a concrete manhole cover and steel I-beams. Member Schmidt asked whether the Applicant planned to drive over the area of the septic distribution box or the septic line that leads from the distribution box to the leach field. The Applicant explained that he would not be driving over the distribution box, but that he would be driving over the septic line that runs from the distribution box to the leach fields. He explained that his plan is to reinforce that area so as not to cause damage to the septic line. The Applicant further explained that the septic system was installed approximately 20 years ago, and is therefore a fairly new system. Member Hannan asked the remaining Board members whether any of them had any additional questions for the Applicant, to which none of the members posed any questions. Member Hannan asked for any members of the public to step forward and provide any public comments they wished to provide. No members of the public spoke in favor or against the application, nor did any member of the public submit any comments. Member Schmidt then made a motion to close the public hearing, which was seconded by Member Trzcinski and was unanimously approved.

Attorney Tingley then confirmed for the record that the application seeks an area variance for a residential application, and therefore constitutes a Type II action under SEQRA, and no further SEQRA determination is required. The Zoning Board then deliberated on the application. The Board agreed that the area variance application would not produce an undesirable change in the character of the neighborhood, nor would it produce a detriment to nearby properties if the application was granted. In this regard, Member Schmidt noted that the proximity of the garage to the adjoining property was not a significant issue given that the adjoining property is a farm field. The remaining Board members agreed. With respect to

whether the benefit sought by the Applicant can or cannot be achieved by some method, feasible for the Applicant to pursue, other than an area variance, Member Trzcinski noted that an alternative method could achieve the same objective of constructing a garage, but that the alternative would be expensive because it would require the Applicant to dig up and replace the septic system which had been installed approximately 20 years ago. Member Schmidt agreed, and also noted that the location of the pool also inhibits where the garage can be located on the property. The remaining Zoning Board members concurred. With respect to whether or not the requested area variance was substantial, Attorney Tingley reminded the Board that the variance sought was a 9' variance, which would allow placement of the garage at 16' from the property line, whereas the Zoning Code requires a 25' setback. Member Schmidt did not consider the area variance to be substantial because the Applicant's proposed location of the garage and the area of the proposed variance are along the property line that abuts a cornfield, not a residential use. The other Zoning Board members concurred that the requested variance was not substantial. With respect to whether the proposed area variance would have an adverse effect on the physical or environmental conditions in the neighborhood or district, the Zoning Board noted that the requested variance would have no adverse effect given the setting in which the proposed garage will be located, and because any concerns that Member Schmidt had with respect to the Applicant driving over the septic line had been addressed by the Applicant's proposal to reinforce the ground above the septic lines. With respect to whether the difficulty was self-created, Member Trzcinski commented that, technically, the difficulty was self-created because the septic system was installed in that particular location, but that the septic system was installed 20 years ago, long before the Applicant had likely considered construction of a garage in that area. Member Hannan agreed that the difficulty may have been technically self-created, but that

the Applicant likely did not anticipate building the garage when the septic system or pool were installed. Following the deliberation by the Zoning Board of Appeals, Member Balistreri made a motion to approve the area variance application, which was seconded by Member Trzcinski and was unanimously approved.

The next item of business on the agenda was the area variance applications made by Arthur Durivage for property located at 1009 Cloverlawn Road in connection with a 20' x 22' carport which had been installed at the property. Member Balistreri noted that he had previously recused himself and was recusing himself from participation in the consideration of the application. Member Balistreri then exited the meeting room. Attorney Tingley noted for the record that the Zoning Board had conducted deliberations at its December 16, 2013 meeting and that the Board had directed Attorney Gilchrist to prepare a draft written determination based upon those deliberations. Attorney Tingley further noted that the draft determination had been sent to the Zoning Board Members last week for review. Member Hannan requested that Attorney Tingley read the draft determination into the record and for the benefit of the public, whereupon Attorney Tingley read the draft determination into the record. Following the reading of the determination into the record, the Zoning Board members each noted that they did not propose any changes to the draft determination. Thereupon, a motion was made by Member Trzcinski to adopt the written determination denying the area variance applications, which motion was seconded by Member Schmidt. The motion was passed by a vote of 3/0, with Member Balistreri not participating. Attorney Tingley noted for the Zoning Board that given the Board's determination, his office would finalize the decision and file it in the Town Clerk's Office.

After the Durivage matter was concluded, Member Balistreri reentered the meeting room.

The Zoning Board confirmed that the meeting for February would be held on February 24, 2014 at 6:00 p.m. at Town Hall, given the President's Day holiday on the Board's otherwise regular meeting date.

The index for the January 13, 2014 meeting is as follows:

1. St. Germain – area variance – public hearing.
2. St. Germain – area variance – granted.
3. Durivage – area variances – formal written decision denying the area variances reviewed and adopted.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD February 24, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN, E. JOHN SCHMIDT, CAROLINE TRZCINSKI and MARK BALISTRERI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The members of the Zoning Board reviewed the draft minutes of the January 13, 2014 meeting. Member Trzcinski noted that the motion to designate Member Hannan as the Acting Chair for the meeting was seconded by Member Schmidt, not Member Hannan as noted in the draft minutes. The Zoning Board agreed to amend the draft minutes to reflect that Member Schmidt seconded the motion. Upon motion of Member Trzcinski, which was seconded by Member Schmidt, the minutes of the January 13, 2014 meeting were unanimously approved with the noted amendment.

There were no items of old business on the agenda for the February 24, 2014 meeting.

The first item of new business on the agenda was Alta East, Inc. for an area variance and a special use permit for the proposed redevelopment project for property located at 1163 Hoosick Road. Present for the Applicant was John Lapper, Esq., from the firm of Bartliff, Pontiff, Stewart & Rhodes, P.C., along with the Robert Osterhoudt, P.E. from Bohler Engineering, LLC and Mark Dombal from Alta East, Inc. Mr. Lapper generally described the proposed redevelopment project. Mr. Lapper explained that the property is currently under contract to be sold by Mr. Spiak to Alta East, Inc. which is contingent on securing approvals for the proposed redevelopment. Mr. Lapper explained that the need for the area variance arises from the location

of the DOT right-of-way along Route 7. The proposed fuel pump canopy is proposed to be located approximately 60 feet from the edge of the pavement of Route 7, but the DOT right-of-way would be approximately 5 feet from the edge of the canopy as currently proposed. Mr. Lapper also explained that the application included a request for a special use permit for the sale of fuel. The action is an unlisted action, and Mr. Lapper requested that the Board consider performing its own SEQRA review rather than performing a coordinated SEQRA review. Mr. Osterhautt then generally described the project, referring to an aerial photograph of the project site with property lines and other details overlaid. Mr. Osterhautt reported that the DOT right-of-way is abnormally wide in that location because Route 7 previously had a much tighter corner in that area, and when DOT widened that curve, it did not change the boundaries of its right-of-way. Mr. Osterhautt explained that there are currently existing three structures on the site, consisting of a single family residence, a service station, and a fuel canopy. The proposal is to redevelop the site into a convenience store and fueling station. Mr. Osterhautt explained that the existing service station would be discontinued, the single family residence would be removed, an existing fuel tank would be maintained and an additional fuel tank would be added. Mr. Osterhautt also explained that the proposed location of the fuel canopy would be shifted from its current location, which is 1 foot away from the DOT right-of-way, to the proposed location, which is 5 feet away from the DOT right-of-way. With regard to the site layout, Mr. Osterhautt explained that the proposal sought to maintain the existing curb cuts, with a slight modification to one of the islands. The paved area is proposed to be resurfaced, and there is proposed a drive-thru lane, which will circulate around the rear of the building. Mr. Osterhautt also explained that the Planning Board has reviewed the concept plan, and suggested that the proposed area of the dumpster was not in conformance with the 7 foot side setback. The current plan has been

revised to locate the dumpster in accordance with the 7 foot side setback. Mr. Osterhautt also generally described the justification for the issuance of the area variance and special use permit, and further explained that the shape of the lot prevents them from relocating the proposed convenience store any further back than as shown on the proposed plan. Member Schmidt asked Mr. Osterhautt to identify the location of the existing underground storage tank as well as the proposed additional tank. Mr. Osterhautt showed that the tanks would be located on the western side of the site. Member Trzcinski asked whether the drive-thru lane at the rear of the building would be used for drive-thru retail sales. Mr. Osterhautt confirmed that the proposal was to include a drive-thru window, but that no specific vendor has yet been identified. In response to Member Hannan's questions, Mr. Osterhautt confirmed that the project would include the sale of diesel fuel. Member Balistreri asked whether the sale of the property to Alta East, Inc. was contingent on approval of the plans, and Attorney Lapper confirmed that the contract was contingent on the approval of the plans. After questions from the Board had been answered, Member Hannan made a motion to accept the application for area variance and special use permit as complete and to set a public hearing for March 17, 2014 at 6:00 p.m. at Brunswick Town Hall, which motion was seconded by Member Schmidt, and was unanimously approved. Member Hannan then made a motion to refer the applications to the Planning Board for a formal recommendation, which motion was seconded by Member Trzcinski, and was unanimously approved. Mr. Osterhautt then explained that he has reached out to DOT concerning the application, and Mr. Kreiger confirmed that the application has been referred to County Planning. The Board generally discussed and agreed upon performing an uncoordinated SEQRA review.

The next item of new business was the application of Christian McGrath seeking an area

variance in connection with the construction of a wood deck and two-story addition with a foot print of approximately 18 feet by 22 feet for property located at 205 Bulson Road. Matthew Turner, Esq. appeared on behalf of the Applicant, and the Applicant was also present. The property owner is the father of the Applicant, and is currently in Florida. Mr. Turner explained that the variance application would allow construction of the deck and addition to be located between 5 and 7 feet from the right side setback. He further explained that the adjacent property nearest the proposed addition and deck is a vacant field used for growing corn. Member Hannan asked Mr. Turner if the addition and/or deck had already been constructed. Mr. Turner responded that construction had already begun, because the contractor, Ed Hoag, was under the impression that a Building Permit had already been issued. The misunderstanding arose from Mr. Hoag seeing a Building Permit on the kitchen table of the property owner, but the Building Permit was actually issued for construction of a pool. Member Schmidt asked when construction had started and Mr. Turner explained that construction started in October of 2013 and was continued from time to time as Mr. Hoag was available until the Town issued a Stop Work Order, which was approximately 4-6 weeks ago. Chairman Steinbach asked whether there was a permit for the addition. Mr. Kreiger explained that there had been a Building Permit for the one-story section and existing two-story addition to the house. He also explained that there was a permit for the construction of the swimming pool. Mr. Kreiger confirmed that there was no permit issued, however, for the addition that is at issue on this application or the wood deck. Mr. Turner explained again that Mr. Hoag, the contractor, thought that the Building Permit for the swimming pool was a Building Permit for the addition and the wood deck. Member Schmidt asked whether the Applicant had applied for a Building Permit after the Stop Work Order was issued. Mr. Turner explained that upon issuance of the Stop Work Order, the Applicant was

advised to file the application for an area variance. Member Hannan asked whether the Applicant had spoken with the owner of the adjoining property, and the Applicant responded that the adjoining property owner had explained to the Applicant that a variance would be required. Mr. Turner explained to the Board that an aerial photograph from the County showed that it appeared there was no setback issue. Member Steinbach asked the Applicant whether an Environmental Assessment Form had been submitted with the application. Mr. Turner explained that it was his understanding that SEQRA was not applicable to the proposal because it was a Type II action. After the Board's questions were answered, Member Balistreri made a motion to accept the application as complete, which was seconded by Member Hannan, and unanimously approved. Member Hannan then made a motion to schedule a public hearing on the application for March 17, 2014 at 6:00 p.m. at Brunswick Town Hall, which was seconded by Member Balistreri, and was unanimously approved. Mr. Turner and the Applicant then confirmed that the ZBA members would be permitted to enter the site and to walk around to see the location of the proposed deck and addition in relation to the adjoining property. Mr. Turner stated that he would submit a copy of the Building Permit for the pool, as well as the aerial photograph he referenced from the County.

The next item of new business was the application of Witt Construction, Inc. for an area variance to permit construction of an addition to an existing single family residence located at 3 High Meadow Road. Patrick Russo appeared on behalf of Witt Construction, Inc. The owner of the property is Michael and Aimee Uccellini. The proposed addition actually consists of two additions on opposite ends of the existing home. The variance is needed with respect to that portion of the addition which is nearest the end of the cul-de-sac on which the property is located. The required setback is 25 feet and the proposal is to construct the addition

approximately 11 feet from the property line. Mr. Russo explained that the need for the variance arose from the irregular shape of the property. Mr. Russo further explained that the closest neighbor is approximately 150 feet away and that there is a buffer of trees and an existing shed between the proposed addition and the nearest property. Member Trzcinski asked Mr. Russo what the purpose of the addition was, and Mr. Russo explained that the addition requiring the variance would be used as a garage. Mr. Russo further explained that the existing garage would be incorporated into the residence. After all questions from the Board were answered, Member Hannan made a motion to accept the application as complete, which was seconded by Member Schmidt, and unanimously approved. Member Hannan then made a motion to set a public hearing for March 17, 2014 at 6:00 p.m. at Brunswick Town Hall, which motion was seconded by Member Schmidt, and unanimously approved.

The last item of new business was the special use permit application made by Stewarts Shops Corporation for property located on Brick Church Road. Appearing on behalf of the Applicant was Chuck Marshall, the real estate representative for Stewarts. Mr. Marshall explained that the current application proposes a new convenience store with self service fuel pumps and the demolition of the existing residence and existing commercial building on the site. The new convenience store would be approximately 3,400 square feet, whereas the existing convenience store is approximately 2,000 square feet. Mr. Marshall further explained that currently existing are two pump islands and the application proposes 6 pump islands. Mr. Marshall explained that one of the curb cuts would remain as existing and another one would be moved slightly. Member Steinbach asked Mr. Marshall to explain the difference between the existing store and fuel pumps and the proposed store and fuel pumps. Mr. Marshall explained that the 6 proposed fuel pumps would include handles for unleaded fuel and there would also be

two handles for slow pump diesel fuel. He also explained that the increase in the square footage of the proposed store over the existing store would be approximately 50%. Member Hannan asked whether the diesel pumps would be slow-flow, and Mr. Marshall responded that they would be given the market for diesel in this particular area, which includes an increase in the past several years in the number of cars that run on diesel fuel. After the Board's questions had been answered, Member Hannan made a motion to accept the application as complete, which was seconded by Member Schmidt, and unanimously approved. Member Hannan then made a motion to refer the application to the Planning Board for a formal recommendation, which motion was seconded by Member Balistreri, and was unanimously approved. Member Balistreri then made a motion to schedule the public hearing for March 17, 2014 at 6:00 p.m. at Brunswick Town Hall which motion was seconded by Member Hannan and was unanimously approved.

Member Trzcinski then made a motion to adjourn the meeting, which was seconded by Member Hannan, and was unanimously approved.

The index for the February 24, 2014 meeting is as follows:

1. Alta East, Inc. – area variance and special use permit.
2. McGrath – area variance.
3. Uccellini – area variance.
4. Stewarts – special use permit.

The proposed agenda for the March 17, 2014 meeting currently is as follows:

1. Alta East, Inc. – area variance and special use permit (public hearing to commence at 6:00 p.m.).
2. McGrath – area variance (public hearing to commence at 6:00 p.m.).
3. Uccellini – area variance (public hearing to commence at 6:00 p.m.).
4. Stewarts – special use permit (public hearing to commence at 6:00 p.m.).

Zoning Board of Appeals

TOWN OF BRUNSWICK

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MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD March 17, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN, E. JOHN SCHMIDT, CAROLINE TRZCINSKI and MARK BALISTRERI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The Zoning Board members reviewed the draft minutes of the February 24, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the minutes of the February 24, 2014 meeting were unanimously approved without amendment.

The first item of new business on the agenda was the area variance and special use permit applications submitted by Alta East, Inc. for property located at 1163 Hoosick Road, the former Spiak's Garage. The Applicant seeks to redevelop that location into a convenience store and fueling station. The Zoning Board opened a public hearing on these applications. The Notice of Public Hearing was read into the record, with the public hearing notice having been published in the Troy Record, posted on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach requested that the Applicant make a brief presentation concerning the project. Chris Boyea of Bohler Engineering and the project attorney were present for the Applicant. A general overview of the project was presented, which includes a proposed 3,800 square foot convenience store with a drive-thru service at the rear of the building, 19 parking spaces for the convenience store, the elimination of any service of vehicles at the location, relocated fueling stations now to include 4 fueling dispensers located toward the front of the project site, with the existing curb cuts being reused for access to the

convenience store and fuel pumps. Mr. Boyea noted that with regard to the Zoning Board's referral of the special use permit application to the Planning Board, the Planning Board had issued a positive recommendation on the project. Mr. Boyea explained that the area variance was required with regard to the canopy and fueling stations, given the New York State right-of-way in connection with Route 7, and while Route 7 is a significant distance from the fueling stations, the New York State right-of-way does go deeper into the project site and therefore an area variance is required. Mr. Boyea did say that his office had coordinated with both NYSDOT and Rensselaer County Highway Department regarding the project, and that both agencies had given concept approval. Mr. Boyea noted that if the Zoning Board issues the area variance and the special use permit, the project will still require site plan review by the Planning Board. Chairman Steinbach then opened the floor for receipt of public comment. William Doyle, Esq., 317 Brick Church Road, stated that he was providing comment both as attorney and representative of Jim Spiak, but also as owner of property located directly across the project site on the opposite side of Route 7, and that the visual appearance of this location was important to him as a property owner. Mr. Doyle stated that the Spiak family had operated a service station at that location since the 1930's, and that when Jim Spiak sought to sell the station, he had a lot of interest in that location but did approve of the sale to Alta East because he thought their proposal was a good use for that location, and even though Altat East was not going to continue the service station, the retail sale of gasoline would continue at the site. Mr. Doyle reminded the Zoning Board that the site has been zoned commercial since the 1970's, and that the location had always suited Spiak for the operation of the service station and retail gas sales, and will also suit the proposed use by Alta East. Regarding the area variance application, Mr. Doyle commented that before Route 7 was realigned, the travel lane of Route 7 was very close to the gasoline

pumps, and that the pump location had not been changed but is now significantly removed from Route 7 given the Route 7 realignment, and thought it was logical to have gas pumps in that general location off the travel lane for Route 7 and that the area variance should be granted. Mr. Doyle also stated that Mr. Spiak would be proud to have Alta East own and operate that location. In sum, Mr. Doyle stated that in his opinion, the site will be attractive, will be a good use of that location, that the Town is not oversaturated with gas stations and that competition is good for pricing, and supports the issuance of both the area variance and the special use permit. Mark Cipperly, 210 Bulson Road, commented that he is co-owner of the Agway Store further east on Route 7, but that the Agway was formerly a neighbor of Spiak and also a customer of Spiak, and thought that the continuation of gasoline sales at that location was an appropriate use, and supported Spiak and the current application. Frank Brennanstuhl, 27 Dusenberry Lane, commented that he was 100% in support of the project, but thought that it would be a good gesture to have a plaque installed at the site in connection with the redevelopment indicating that the Spiak family had operated a service station at that location for decades. No further comments were submitted. Thereupon, Chairman Steinbach entertained a motion to close the public hearing on the area variance and special use permit applications by Alta East. Member Hannan made a motion to close the public hearing, which motion was seconded by Member Balistreri. The motion was unanimously approved, and the public hearing was closed.

Thereupon, the Zoning Board members determined to move forward into the business portion of the meeting, and continued directly on the discussion of the Alta East project before proceeding to additional public hearings on the agenda. Attorney Gilchrist noted that the first order of business for the Zoning Board was review of the Environmental Assessment Form, and making a determination of environmental significance under SEQRA. In that regard, the Zoning

Board members reviewed Part II of the Environmental Assessment Form submitted by the Applicant, determining that the proposed action will not create a material conflict with an adoptive land use plan or zoning regulation; will not result in a significant change in the use or intensity of use of the project site; will not impair the character or quality of the existing community; does not have an impact on any critical environmental area; will not significantly change the level of existing traffic; will not cause a significant increase in the use of energy but rather does incorporate energy conservation fixtures in the proposed new convenience store and lighting for the pump island; will not have a significant impact on water supply or wastewater treatment; will not have a significant impact on the character or quality of important historic, archeological, architectural or aesthetic resources; will not result in a significant adverse change to natural resources; will not result in an increase in potential for erosion or drainage problems; and will not present a significant risk to environmental resources or human health, noting that any underground storage tank for the storage of petroleum must meet all current state and federal regulatory guidelines. Thereupon, Member Schmidt made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Hannan. The motion was unanimously approved, and a SEQRA negative declaration adopted. Mr. Kreiger noted that the application had been referred to the Rensselaer County Department of Economic Development and Planning, and that such office responded that the project does not have a major impact on County plans and that local consideration shall prevail. The Zoning Board next deliberated on the special use permit application. Attorney Gilchrist noted that the special use permit application sought approval for the fueling station aspect of the project only, not the entire site redevelopment. Regarding the special use permit consideration, the Zoning Board determined that the location of a fueling station at the project site did not significantly impair general health,

safety, or welfare considerations, particularly in light of the fact that retail gasoline sales have been occurring at this location for decades; that the project site was appropriately located with respect to transportation facilities, most particularly NYS Route 7, and given its historical use, that appropriate police and fire protection were available to service this facility; that there was appropriate and adequate parking for the fueling station proposed with redevelopment project; that the fueling station would not cause undue traffic congestion or create a traffic hazard, again most particularly given the historic use of this site as the location for retail gasoline sales; and that the project would not significantly impair neighborhood character or the surrounding properties, again with particular regard to the fact that this location had been used for retail gasoline sales for decades. In light of this deliberation, Member Balistreri made a motion to approve the special use permit for the fueling station portion of this project, which motion was seconded by Member Hannan, the motion was unanimously approved, and a special use permit granted. The Zoning Board then addressed the application for area variance with respect to the location of the pump canopy and fueling stations in relation to the front yard property line given the width of the New York State right-of-way in connection with Route 7. Regarding these issues, the Zoning Board members determined that the area variance and location of the pump islands on the project site would not produce a change in the character of the neighborhood nor a detriment to nearby properties, but in fact the relocation of the fueling area would create greater distance between the pump islands and the front property line over current conditions; that given the size of the site and its historic use, that a feasible alternative to locating the pump islands on the project site did not exist; that while the total amount of the area variance from the front property line could be viewed as substantial, the variance is appropriate given the historic use of the site for retail gasoline sales and the historic location of the pumps, and further that the need

for the area variance is unique in that the total width of the New York State right-of-way creates the need for the area variance whereas the pump islands are a significant distance from the current location of the travel lanes for NYS Route 7; that the area variance will not have an adverse affect on the physical or environmental conditions in the neighborhood, noting that the Board had considered potential significant adverse environmental impacts and determined to adopt a SEQRA negative declaration; and that the need for the area variance was not self-created in light of the total width of the New York State right-of-way in connection with Route 7. Based on his deliberation, Member Balistreri made a motion to approve the area variance for the location of the pump islands and canopy, which motion was seconded by Member Hannan. The motion was unanimously approved, and the area variance granted. The project owners and representatives did note for the record that the comment concerning installation of a plaque to commemorate the use of the site by the Spiak family was appropriate, and would be incorporated into the redevelopment of the site. It is noted that this application will now be considered by the Planning Board pursuant to the site plan regulations of the Town.

The second item of business on the agenda was the area variance application submitted by Christian McGrath concerning property located at 205 Bulson Road. The Zoning Board opened a public hearing on the application. The Notice of Public Hearing was read into the record, with that notice having been published in the Troy Record, posted on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach requested that the Applicant make a presentation regarding the proposed area variance. Matthew Turner, Esq., representing the McGrath family, presented an overview of the requested area variance, stating that the area variance was required regarding the eastern boundary line of the residential lot. Attorney Turner reviewed a letter with exhibits that he had submitted to the

Zoning Board dated March 14, 2014, focusing on the aerial photographs of the residential lot which were attached to his March 14 submittal. Attorney Turner made a note of the fact that the proposed deck and addition to the existing home on the lot required an area variance concerning the eastern lot line, and that the adjacent lot immediately to the east contained no structures and was currently used as agricultural. Attorney Turner also noted that proposed landscaping will provide a vegetative buffer between the house addition and the adjacent lot. Chairman Steinbach then opened the floor for receipt of public comment. First, Chairman Steinbach requested any comments in favor of the area variance application. Hearing none, Chairman Steinbach then requested any public comment in opposition to the area variance. Mark Cipperly, 210 Bulson Road, stated that he was the owner of the property located immediately to the east of the McGrath lot, and that he does own a home on the opposite side of Bulson Road from the McGrath lot. Mr. Cipperly noted that the addition to the house will be only 5-6 feet from the eastern boundary property line, where the side yard setback under the Town Code requires 25 feet. Mr. Cipperly did note that the house on the McGrath lot may in fact pre-date zoning, and that the house itself may not be 25 feet from the property line, but that the proposed addition will be only 5-6 feet off of his property line. Mr. Cipperly did note that this situation has been entirely self-created by Mr. McGrath, and that if there is any hardship, he has brought the hardship on through his own action. Mr. Cipperly stated that the variance will have a negative effect on his property and property value, and while that property is now in agricultural use, it could be put into residential use in the future since homes may be constructed in this zoning district, and that having the home on the McGrath lot only 5-6 feet from the property line impairs his ability to use his property for residential purposes. Member Hannan inquired whether Mr. Cipperly advised Mr. McGrath as to where the property line was. Mr. Cipperly explained that

this project was started by Mr. McGrath in December, 2013, which was an extremely busy time for his business in connection with the Christmas season, but that when the wall for the proposed addition to the house went up, Mr. Cipperly did speak with Mr. McGrath concerning the location of the property line and the proximity of the addition to his property line. Chairman Steinbach asked whether there was any dispute regarding the location of the property line. Mr. Cipperly stated that while the exact location of the property was not clear when the discussions with Mr. McGrath started, he did know the approximate location of the property line, and that a survey had since been completed, which does confirm the location of the property line in the location where Mr. Cipperly thought it was, confirming that the addition to the house will only be approximately 5-6 feet from the confirmed boundary line. Peg Cipperly, 210 Bulson Road, also commented that she and Mark have three kids, and that it was always her thought that her children could be able to build a home on the property that is now in agricultural use, but that now the McGrath structure would only be 5-6 feet from the property line which would impair their ability to locate a house on the Cipperly property. Attorney Turner stated that the addition to the McGrath house was not over the property line, and that there would be significant room left on the Cipperly lot to build a house. Attorney Turner did note that McGrath was immediately responsive to Mr. Cipperly when the issue of the location of the lot line came up, and that the request for the area variance was immediately made to the Town. Peg Cipperly also noted that if McGrath sells his house, any future owner might have an issue with Cipperly building a house on their property, which could end up being very close to the McGrath house simply because McGrath has built an addition so close to the property line. Chairman Steinbach requested any further public comment. Hearing none, Member Balistreri made a motion to close the public hearing on the area variance application submitted by McGrath, which motion was

seconded by Member Trzcinski. The motion was unanimously approved, and the public hearing closed.

The Zoning Board members proceeded to deliberate on the McGrath area variance matter. Member Hannan inquired of McGrath's contractor, who was present at the meeting, as to whether he checked the boundary line prior to framing out the addition to the house. The Applicant's contractor responded by stating he did not check the boundary line, but only was going by what he was told. Member Hannan said he understood the concerns of the Cipperlys, and was looking for any way that this matter could be resolved without huge hardships on either side. The Applicant's contractor stated that he had looked into the option of relocating the house on the McGrath lot, but this was a substantial undertaking and would be terribly expensive, on the order of \$52,000. Member Balistreri asked about the specific location of the deck and additional framing on the aerial photographs provided by Attorney Turner, and also had questions regarding existing trees and vegetative buffer. Member Schmidt wanted to confirm on the record that the Applicant started the addition to the house without obtaining a building permit specifically for the building addition. The Applicant stated this was correct. Member Schmidt wanted to confirm that the contractor was under the impression that a prior building permit which had been issued for the installation of a swimming pool also provided for the construction of the addition for the house. Member Schmidt questioned how a contractor could start construction of an addition to a house when the only building permit issued was for a pool, and that even if the contractor had questions about what the building permit covered, the owner of the property certainly knew that the building permit for the swimming pool did not cover construction of an addition to the house. Member Schmidt also stated that he has been a farmer all his life, and has worked many fields planting crops, and that in his opinion a farmer cannot

plant crops within 4-5 feet of a house, simply because of requirements for fertilizing and equipment access, and by locating a residential structure so close to the property line next to an agricultural field, it takes away the ability of Cipperly to farm his field, let alone build a house on the land in the future. Mr. Schmidt stated that even if the current owner would allow Cipperly to farm in that field, a future owner of the McGrath parcel may have significant problems with that. Member Schmidt stated that he had already gone to the site to take a look at the 2 lots, but that he wanted the ability to go back out to the property in light of the public hearing comments and the additional information submitted by Attorney Turner, and wanted the ability to see the site again before any decision was made on the area variance application. Member Trzcinski concurred, stating that the requested variance for the side yard line was significant, since the code requires a 25 foot setback from the side yard line and the Applicant is seeking a 5 foot setback. Member Hannan also stated the option of relocating the addition on the lot should be considered. Attorney Gilchrist stated that since the public hearing has been closed, the Zoning Board has up to 62 days in which to render its determination on the application. Attorney Gilchrist did note that the application seeks an area variance for residential use, and therefore constitutes a Type II action under the State Environmental Quality Review Act, and no further SEQRA analysis will be required. The Zoning Board then proceeded to begin preliminary deliberations on the area variance elements, given the information obtained during the public hearing and additional submissions by the Applicant. As to whether the area variance would produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairman Steinbach said that in his opinion the variance would not produce an undesirable change in the neighborhood, but would create a detriment to the nearby and adjacent property owned by Cipperly. Member Schmidt concurred, stating that he would think this created a detriment to the

Cipperly property even if that property is only farmed in the future, given the proximity of the residential structure to the farm field. As to whether the Applicant has a feasible alternative to locating the addition where currently planned, the Zoning Board members wanted more information on whether the addition could be relocated, and that the situation has proved to be difficult since the addition has already been started. Member Schmidt wanted additional information also on restrictions in terms of fertilizers and agricultural field applications in relation to residential structures. Attorney Gilchrist will research that issue. As to whether the area variance request is substantial, all the Zoning Board members generally concurred that it was substantial. The Zoning Board members generally discussed whether the project sought through the area variance would have an adverse affect on the physical or environmental conditions in the neighborhood, generally concurring that the proximity of the residential structure to the farm field could impair agricultural activities on that adjacent agricultural field. All of the members also generally concurred that the difficulty in this situation has been self-created, particularly since the addition was started without the necessary building permit. Member Hannan made a motion to adjourn and continue deliberations on this matter at the April 21 meeting, which motion was seconded by Member Schmidt. The motion was unanimously approved, and deliberations on the McGrath area variance application are to be continued at the April 21 meeting, noting that the Zoning Board members would seek to have an additional site visit prior to the April 21 meeting.

The next item of business on the agenda was the application by Witt Construction, Inc. for an area variance in connection with the addition to an existing single family residence located at 3 High Meadow Road. The Zoning Board opened the public hearing on this application. The Notice of Public Hearing was read into the record, with such notice having been published in the

Troy Record, posted on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Patrick Russo of Witt Construction, Inc. was present on the application, together with the property owner, Michael Uccellini. Chairman Steinbach requested Mr. Russo to present an overview of the project. Mr. Russo stated that a minor area variance was being requested in connection with a proposed addition to the existing residential home, and that the lot was somewhat irregular in shape necessitating the request for the variance, and that the variance was necessary for the addition in order to keep the appropriate structural line and aesthetic appearance of the home. Mr. Russo did state that the closest structure to the area of the proposed addition was approximately 200 feet away, and there was an intervening tree line to provide a vegetative barrier. Chairman Steinbach then opened the floor for public comment. There were no members of the public seeking to present any public comment. Thereupon, Member Balistreri made a motion to close the public hearing on the area variance application by Witt Construction, which motion was seconded by Member Hannan. The motion was unanimously approved, and the public hearing closed. Thereupon, the Zoning Board members proceeded to deliberate on the area variance application. Chairman Steinbach noted that he had driven by the site, and finds that the request for the area variance to be reasonable, and concurs that the unique character of the lot and the architectural and aesthetic appearance of the house promotes issuance of the small area variance. Members Schmidt and Hannan also concurred that they had viewed the property, and have no issues concerning the application. Member Balistreri had one inquiry regarding the total amount of the variance sought. Hearing no further questions or comments, the Zoning Board entertained action on the area variance application. Attorney Gilchrist noted that this application seeks an area variance in connection with a residential use, and constitutes a Type II action under the State Environmental Quality Review Act, and no

further determination of environmental significance is required under SEQRA. The Zoning Board members then reviewed the area variance elements, finding that the requested variance would not produce an undesirable change in the character of the neighborhood nor create a detriment to nearby properties, that given the unique nature of the lot and location of the existing structure that a feasible alternative was not available, that the area variance was not substantial, that the variance would not produce an adverse effect on the physical or environmental conditions in the neighborhood, and that given the unique nature of the lot the difficulty was not self-created. After such deliberation, Member Balistreri made a motion to approve the area variance on the Witt Construction application, which motion was seconded by Member Hannan. The motion was unanimously approved, and the area variance granted.

The last item of business on the agenda was the special use permit application by Stewarts Shops Corporation for property located on Brick Church Road. Chris Potter of Stewarts Shops Corporation was present for the Applicant. The Zoning Board opened the public hearing on this application. The Notice of Public Hearing was read into the record, with such notice having been published in the Troy Record, posted on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach requested Mr. Potter to present an overview of the project. Mr. Potter generally reviewed the concept site plan, which includes a new 3,500 square foot convenience store with fueling station, with the fueling station providing for 6 dispensers and a total of 12 pumps. Mr. Potter explained that the existing petroleum underground storage tank would remain in its current location, and an additional 12,000 gallon underground storage tank would be installed, with chambers for diesel fuel as well as regular gasoline. Mr. Potter reviewed the proposed parking, increasing the total number of spaces from 20 currently to a total of 35 spaces. Mr. Potter explained that the curb cut

on Tamarac Road would remain essentially unchanged, but the curb cut on NYS Route 278 (Brick Church Road) would be moved approximately 55 feet to the north, and that NYSDOT has conceptually approved that location. Member Trzcinski inquired whether the diesel fuel was being provided for large diesel trucks. Mr. Potter said that the diesel fuel was not provided for fueling large trucks, but that the increased parking area would allow larger trucks to park in the Stewarts parking lot as opposed to parking on the shoulders of NYS Route 278 and Tamarac Road. Mr. Potter commented that the location of the pumps did not allow adequate circulation for large truck diesel fueling. The Zoning Board then opened the floor for receipt of public comment. Connor Holton, 28 Tamarac Road, commented that the proposal to redevelop the Stewarts Shop was a good idea, that additional parking was required in order to address what he saw as a current hazard with trucks parking on the shoulders of roads, and that this would be an improvement over existing conditions, and that this Stewarts does serve the community. Pauline Iwanowicz, 23 Tamarac Road, stating that her concern was the location of the waterline which goes through the parcel currently owned by Rodriguez and on which the Stewarts Shop will be built. Ms. Iwanowicz's concern was that the public water to her home, as well as two other homes on Tamarac Road, is fed through the waterline going through the Rodriguez lot, and she was very concerned about impact to the water supply to her house. Member Trzcinski inquired whether there are any current problems with water going to her house currently. Ms. Iwanowicz stated that there were current issues, and that she has previously brought them to the attention of the Town. Mr. Kreiger did note that the issue regarding the location of the waterline has been raised, and that the Town Water Department is looking into that issue. Mr. Potter stated that current information shows that there is a 1" service line located behind the Rodriguez home, and that the line is servicing the Rodriguez parcel as well as 3 parcels on Tamarac Road, but that the

proposal to redevelop the site would not effect that waterline, and that the only thing planned for the location of the waterline was a blacktopped area. Member Balistreri asked whether the grading and pavement of that area would effect the waterline. Mr. Potter stated that there would not be any effect on the waterline. The Zoning Board members questioned that response. Mr. Potter responded that to the best of his knowledge, there does exist a 16" water main directly on NYS Route 278, and that a ¾" line servicing the Stewarts Shop comes directly off the water main on Route 278, and that the current ¾" service line would be impacted by the proposed redevelop of the site. To address this, Stewarts is proposing a new 1" water line to be installed for the new Stewarts Shop, which would also provide service to the first house adjacent to the Stewarts property on Tamarac Road. There is the possibility that such service line could be extended to service the 3 additional houses which are currently fed through the 1" service line through the Rodriguez lot, but who would be paying for the extension of that service line remained an open question. Member Hannan stated that he felt the compaction for a parking area on top of the 1" water line through the Rodriguez lot would have an effect on the public water, and felt the extension of the proposed 1" service line to connect to the 3 effected homes on Tamarac Road would be a good idea. Frank Brennanstuhl, 27 Dusenberry Lane, commented that the site did have a lot of remaining greenspace, and wondered whether the remaining greenspace would be restricted. Mr. Kreiger stated that there are no restrictions to additional development on the site, but that further review by the Town would be required. Mr. Brennanstuhl also thought that Stewarts should connect the 3 effected houses on Tamarac Road with the new 1" service line being proposed. Jim Gardner, 11 Brookhill Drive, stated that his only concern was the lighting for the new Stewarts, and whether any offsite lighting impacts would result. Mr. Potter stated that Stewarts was proposing the use of LED lights, flush mounted

and down-lit, with soffit lights being fully recessed adjacent to the building, and with one 15' pole light using LED and cutoff shields, with no light spillage offsite, including no light spillage from the gas canopy. Member Steinbach stated that the issue of lighting on project sites is always an issue, and that current technology is required both in terms of the type of lighting as well as to shielding of light to prevent offsite spillage. Hearing no further public comment, Member Hannan made a motion to close the public hearing on the special use permit application by Stewarts, which motion was seconded by Member Balistreri. The motion was unanimously approved, and the public hearing closed. Thereupon, the Zoning Board members deliberated on making a determination of environmental significance under SEQRA. The Zoning Board members generally found that the application did not create a significant change in the use or intensity of use of land; would not impair the character or quality of the existing community since this is already an existing Stewarts Shop; would not have an impact on any critical environmental area; would not have a significant adverse change in the existing level of traffic as this is an existing Stewarts Shop; that the action would not cause a significant increase in the use of energy and does provide for available energy conservation fixtures; would not significantly impair the character or quality of important historic, archeological, architectural or aesthetic resources; would not result in a significant adverse change to natural resources; would not result in a significant increase in the potential for erosion or drainage problems; and would not otherwise create a hazard to environmental resources or human health, noting that the underground storage tanks for this location would require compliance with all applicable federal and state regulatory criteria. Based upon such deliberation, Member Balistreri made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Hannan. The motion was unanimously approved, and a negative declaration adopted under SEQRA.

Thereupon, the Zoning Board members commenced their deliberation on the elements for the special use permit. During such deliberation, the issue of the underlying Zoning District for the Stewarts lot as well as the adjacent Rodriguez lot on which the expanded Stewarts store is sought to be constructed, was raised, and it was determined that additional investigation must be undertaken by the Building Department to determine the exact location of the B-15 Zoning District line for these parcels. Upon motion of Member Hannan, seconded by Member Balistreri, and upon unanimous approval thereof, this matter has been adjourned for further deliberation at the April 21 meeting, and the Building Department will continue to investigate the Zoning District issue prior to the April 21 meeting.

There were no new items of business discussed.

The index for the March 17, 2014 meeting is as follows:

1. Alta East, Inc. – area variance and special use permit - granted.
2. McGrath – area variance – 4/21/14.
3. Witt Construction, Inc. – area variance – granted.
4. Stewarts Shops Corporation – special use permit – 4/21/14.

The proposed agenda for the April 21, 2014 meeting currently is as follows:

1. McGrath – area variance.
2. Stewarts – special use permit.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD April 21, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN, E. JOHN SCHMIDT and CAROLINE TRZCINSKI.

ABSENT was MARK BALISTRERI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer. Ronald Laberge, P.E., Consulting Engineer on Mulinio Planned Development District amendment application, also present.

The Zoning Board members reviewed the draft minutes of the March 17, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Schmidt, the minutes of the March 17, 2014 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Christian McGrath for property located at 205 Bulson Road. Christian McGrath and Matthew Turner, Esq. were present for the Applicant. Chairman Steinbach inquired of the Applicant as to whether any additional information concerning this matter would be submitted to the Zoning Board for consideration. Attorney Turner stated that Mr. McGrath had met with the adjoining property owner, Mark Cipperly, and that Mr. McGrath had made a certain offer to Mr. Cipperly to address Mr. Cipperly's concerns regarding the proximity of the proposed two-story residential addition in relation to his property line. Attorney Turner stated that Mr. McGrath is waiting to hear a response from Mr. Cipperly. Chairman Steinbach then inquired whether any Zoning Board members had any additional questions for the Applicant. Member Trzcinski asked

whether the proposed residential addition was built on a foundation. Mr. McGrath stated that there was a foundation. Member Trzcinski then inquired as to why Mr. McGrath had not contacted the Building Inspector for the required inspections of the foundation footings before proceeding with framing out the two-story residential addition. Mr. McGrath stated that he really had no answer to this question, and was relying on his contractor. Mr. McGrath did concede that the footings did need to be inspected, and that he failed to contact the Building Inspector for those inspections. Member Trzcinski stated that if the inspections had been requested of the foundation footings, there would have been no further construction on the framing of the two-story residential addition, since the side yard setback issue would have been raised at that time, and the Stop Work Order would have been issued prior to any framing of the structure. The Zoning Board members generally concurred with that comment. Chairman Steinbach inquired of Attorney Gilchrist as to the procedure for rendering a final decision on this area variance application. Attorney Gilchrist stated that the Zoning Board had a statutory period of 62 days in which to render its final decision following the close of the public hearing in this matter. The public hearing on this application was closed on March 17, 2014, and therefore a final decision must be rendered on or before May 18, 2014. Attorney Gilchrist noted that the next business meeting of the Zoning Board is scheduled for May 19, 2014. Attorney Gilchrist stated that the Zoning Board would be required to render its determination at this April 21 meeting, or schedule a special meeting to be held prior to May 18, 2014. Alternatively, Attorney Gilchrist stated that the New York Town Law does provide that the 62 day time period can be extended upon consent of the Applicant. Chairman Steinbach inquired of the Applicant as to whether he would consent to a one-day extension to the May 19 meeting. Mr. McGrath and Attorney Turner both stated that they would consent to extending the statutory timeframe for a

decision on this area variance application through the Zoning Board's May 19, 2014 meeting. Member Schmidt inquired whether any agreement between Mr. McGrath and Mr. Cipperly would affect the Zoning Board's decision. Attorney Gilchrist stated that such an agreement would not directly affect the Zoning Board's decision, since the Board will still need to address and make a determination on each of the statutory elements for consideration of the area variance. However, Attorney Gilchrist did state that if any additional factual information arises as a result of an agreement between Mr. McGrath and Mr. Cipperly, and most particularly with respect to the impact on Mr. Cipperly's property, such additional facts can and should be taken into account by the Zoning Board in rendering its determination. The Zoning Board members generally concurred that the matter should be adjourned to the May 19 meeting to allow further discussions between Mr. McGrath and Mr. Cipperly. Attorney Gilchrist stated that any such discussions are a private matter, and the Zoning Board will not be involved in any such discussions. Upon motion of Member Trzcinski, seconded by Member Schmidt, and upon unanimous adoption of such motion, the area variance application of Christian McGrath is adjourned until the May 19, 2014 meeting.

The second item of business on the agenda was the special use permit application submitted by Stewart's Shops Corporation for property located at Brick Church Road and Tamarac Road. Chris Potter of Stewart's Shops Corporation was present on the application. Chairman Steinbach inquired of Mr. Potter as to whether there were any further updates on this matter for the Zoning Board's consideration. Mr. Potter stated that discussions are ongoing with the Town of Brunswick concerning the waterline issue at this location, and that Stewarts is continuing to work with the Town Water Department. Chairman Steinbach requested an update on those discussions. Mr. Potter stated that Stewarts has offered to extend its service line from

the existing watermain on Brick Church Road to the new Stewarts Shop being proposed as well as to one additional home located on Tamarac Road, but that at that point the Town would continue to extend the service line to hook in three additional homes on Tamarac Road. However, Mr. Potter stated that discussions are ongoing with the Town Water Department. The members of the Zoning Board were of the general opinion that Stewarts should continue extending the service line and Stewarts should connect the three additional homes on Tamarac Road. Chairman Steinbach asked Mr. Kreiger about the zoning compliance issue. Mr. Kreiger reported that he had verified on several Town zoning maps that the business district line does extend onto the parcel so that all proposed commercial uses are within the business district. Mr. Kreiger confirmed that the current proposal by Stewart's Shop for this location is compliant with the Town Zoning District boundary lines. Chairman Steinbach inquired whether any of the Zoning Board members had any further questions or comments on this application. The Zoning Board members had no further questions or comments. Chairman Steinbach confirmed that a negative declaration under SEQRA had been adopted at the March 17, 2014 meeting. Chairman Steinbach did confirm that the negative declaration was adopted as a result of an uncoordinated SEQRA review, and that the Planning Board would also need to make its own SEQRA determination in connection with the pending site plan. Chairman Steinbach inquired whether the Zoning Board was ready to proceed with a determination on the special use permit application. The members concurred that they were ready to proceed to determination. The Zoning Board members then generally reviewed the elements for consideration of special use permits. First, as to whether the proposed special use is consistent with public health, safety and welfare, Chairman Steinbach noted that the proposed upgrade to the Stewarts Shop is promoting the general public interest, it is consistent with the current use at that location, and will actually

result in a better traffic and parking configuration than currently in use. Member Schmidt concurred, stating that he felt the current proposal by Stewarts Shop is an improvement in terms of traffic and parking, and overall safety at that corner. Member Hannan noted that in the general public interest, he felt Stewarts should connect the additional three homes on Tamarac Road to public water, but Member Trzcinski did not concur in that opinion. The Zoning Board members felt, however, that the upgrade to the Stewart Shop does promote general health, safety and welfare. As to whether the proposed special use is appropriately located with respect to transportation facilities, fire and police protection, waste disposal, and other similar facilities, all members generally concurred that all of these issues are already currently being addressed with respect to the current store operations, and that the proposal actually is an improvement with respect to traffic flow and parking. As to whether the proposed special use provides adequate parking to handle expected public attendance, all members generally concurred that the current proposal will improve parking at this location and add needed parking spaces, that the current Stewarts Shop often has congested parking and that the upgrade to this store would help reduce that congestion, and provide an overall safer traffic flow and parking pattern. As to whether the special use provides reasonable safeguards for neighborhood character, Chairman Steinbach noted that this was an existing Stewart's location and that the proposed upgrade will actually improve the store, traffic patterns, and available parking. Member Schmidt noted that the Planning Board will address any increased lighting as a result of the upgraded Stewarts Shop. As to whether the requested special use would cause undue traffic congestion or create a traffic hazard, all members generally concurred that this proposal will actually improve traffic flow and create a safer situation on the corner of Brick Church Road and Tamarac Road. The Zoning Board members confirmed that the location of the gas pumps do comply with all specific zoning

provisions in the Town Zoning Ordinance. The Zoning Board members also concurred that a site plan is required, and that the application for site plan approval remains pending before the Planning Board. After such deliberation, Chairman Steinbach called for a motion to grant the special use permit to Stewart's Shops Corporation. Member Schmidt wanted to note for the record that the issue of the waterline extension to either just one home or extending to three additional homes on Tamarac Road should be considered by the Planning Board in connection with its site plan review. The Zoning Board members generally concurred with that comment. Thereupon, Member Trzcinski made a motion to grant the special use permit for the filling station at this location, which motion was seconded by Member Hannan. The motion was unanimously approved, and the special use permit granted to Stewart's Shop Corporation for this location. Pauline Iwanowicz, 23 Tamarac Road, was present at the meeting and stated on the record that she felt Stewarts should work with the Town and connect the three additional houses on Tamarac Road with a new waterline, as she is the owner of one of those homes and is concerned that her water service will be interrupted if she is not connected to a new service line as a result of this project.

Two items of new business were discussed.

The first item of new business discussed was the application by Dave Mulinio for an amendment to a Planned Development District located off Farrell Road, on which Mr. Mulinio operates a paintball facility. This matter is before the Zoning Board upon referral by the Town Board for recommendation on this application. David Mulinio and Polly Feigenbaum, Esq. were present on the application. Attorney Feigenbaum handed up to the Zoning Board members an updated project narrative, and gave an overview of what the proposed amendment to this PDD entails. Attorney Feigenbaum explained that Mr. Mulinio was proposing to add a few attractions

to the paintball facility during the fall months, and to expand hours of operation. Attorney Feigenbaum stated that Mr. Mulinio had received no complaints from any neighbors during his two years of operation, and that he had met with his neighbors on the current proposal to add attractions and expand hours, and all his neighbors were supportive of the proposal. Attorney Feigenbaum stated that Mr. Mulinio wishes to expand the hours of operation to add Thursday, 5:00 p.m. to 10:00 p.m., Friday and Saturday 5:00 to 11:00 p.m., and Sunday 5:00 p.m. to 9:00 p.m. during the fall season in conjunction with offering an additional paintball attraction. Attorney Feigenbaum generally reviewed the new attraction as a paintball ride through a haunted field. Ms. Feigenbaum also described generally the area for parking, staging, as well as the area where the haunted field would be located at the paintball facility. Mr. Mulinio also explained that the customers would additionally pass through a 2400 square foot movable prop “clown maze” covered with a tent roof. After completing the maze, customers are then directed to a ride line from which they will be loaded onto a 26’ landscape trailer, with attached mounted paintball guns. Each trailer holds 30 people, and will be pulled by a farm tractor through a “haunted field” at approximately 3 miles per hour. Mr. Mulinio confirmed that there will be security throughout the facility, in addition to the operators and he tried to assure safety and control. Mr. Mulinio also explained that once customers are on the ride, they are not allowed off until the ride is completed and returned to the drop off/loading area. Mr. Mulinio anticipates having 4-5 trailers in a continuous rotation. Mr. Mulinio confirmed that no alcohol or smoking is allowed on the grounds, that the facility is patrolled by paid security to assure a safe and controlled location, both for customers as well as neighbors. Mr. Mulinio further explained that to assure safety in conjunction with the “haunted field” attraction, the mounted and non-removable paintball guns attached to the landscape trailer are modified to reduce the speed of paintballs. Mr. Mulinio did

state that there will be additional lighting, provided by portable lights that will be outfitted with appropriate shields for down-lighting. Attorney Feigenbaum also handed up to the Zoning Board members a letter from the underlying property owner, stating that the property owner consents to and supports the modification to the PDD. Mr. Mulinio did confirm that all proposed activities will be conducted within the original footprint for the facility, and no expansion of the facility into the existing wooded areas is proposed. Finally, Attorney Feigenbaum confirmed that a sound analysis is being prepared, and that information will be submitted to the Town for review. Mr. Mulinio concluded by stating that he is trying to add this attraction to enhance the facility, provide safe family amusement, and add jobs to the community. Attorney Feigenbaum noted that Laberge Engineering had been retained by the Town to review the application for engineering comments, that a comment letter had been prepared by Mr. Laberge, and that Mr. Mulinio is working to address all of the engineering comments. Chairman Steinbach asked whether any of the Zoning Board members had questions for the Applicant. Member Trzcinski asked whether any food would be served. Mr. Mulinio stated that food is provided only through vendor trailers. Attorney Feigenbaum stated that there are no permanent structures on the sight serving food. Member Trzcinski stated that she was familiar with corn mazes, but wanted a further explanation as to what the maze for this location would entail. Mr. Mulinio stated that the maze would be located under a 17' high tent, and that the maze actually consists of several removable pieces, and that the maze is actually constructed within a few days and taken down after the end of the fall season together with the tent. Mr. Mulinio confirmed that he is working with a consultant on this proposal, and will have all necessary insurances in place. Chairman Steinbach asked whether any neighbor objected to the proposal. Mr. Mulinio stated that he had spoken with all of his neighbors, and that no one had raised any opposition. Chairman Steinbach

asked Attorney Gilchrist concerning the procedure on this matter. Attorney Gilchrist stated that the application has been made to the Town Board to amend the existing PDD, and that the Town Board has referred the application for recommendation to both the Planning Board and Zoning Board of Appeals. Once the recommendations have been completed by the Zoning Board and Planning Board, the matter would return to the Town Board for a public hearing and consideration of the PDD amendment. Attorney Gilchrist noted that the Applicant had presented the proposal to the Planning Board, and the Planning Board is waiting for the additional information from the sound study to be conducted at this site before rendering its final written recommendation. Chairman Steinbach requested Ron Laberge, P.E. to review his comments. Mr. Laberge stated that he did recommend that a sound study be conducted to assess the additional sound generated from the proposal upon surrounding properties, and that the Applicant will proceed with the sound study. Mr. Laberge also stated that an updated site plan should be provided for the record, specifically identifying the locations where the additional activities will occur. Mr. Laberge stated that his office had looked at traffic and access issues, and determined that adequate access and parking facilities are provided, noting that a traffic light has now been installed at the intersection of Oakwood Avenue and Farrell Road to help further address any traffic flow issues. Mr. Laberge stated that he had reviewed the proposed lighting, and is of the opinion that the lighting will be appropriately shielded for downlighting, and that a vegetative screening exists around the site so that light impacts should not be significant. Mr. Laberge did note that the lights are portable in nature, so that a final location can be determined in the event any light impacts are apparent after the operations are in place. Mr. Laberge did note that an Environmental Assessment Form must be provided on the application. Chairman Steinbach inquired whether the 17' high tent would be visible from surrounding properties. Mr.

Laberge stated that given the existing height of vegetation, it is unlikely that the tent would be visible from surrounding properties. Chairman Steinbach inquired whether any members had any further questions at this time. Chairman Steinbach was of the opinion that the Zoning Board should likewise wait until the sound study has been completed before making any final recommendation. The Zoning Board members concurred. This matter is placed on the May 19 agenda for further discussion.

The second item of new business discussed was an application for a sign permit submitted by Charles Bulson for property located at 1312 Route 7. Mr. Bulson seeks to install a 4'6" x 4'6" square sign at this location in conjunction with a home occupation. Mr. Bulson stated that there would be writing on both sides of the sign, and that the sign would be wood and constructed in a manner to be consistent with the residence. Mr. Kreiger noted that this property is located in a residential district. Mr. Bulson also stated that he would like to have the sign lit at night, and that the lighting would either shine up from the ground or from the top of the frame for the sign. Chairman Steinbach inquired whether the Zoning Board members felt enough information is in the application to deem the application complete and schedule the public hearing. The Zoning Board members generally concurred that the application is complete. Upon motion of Member Hannan, seconded by Member Schmidt, the sign permit application was deemed complete, and a public hearing is scheduled for the May 19, 2014 Zoning Board meeting to commence at 6:00 p.m.

The index for the April 21, 2014 meeting is as follows:

1. McGrath – area variance – 5/19/14.
2. Stewarts Shops Corporation – special use permit – granted.
3. Mulinio – amendment to Planned Development District – 5/19/14.

4. Bulson – sign permit application – 5/19/14 (public hearing to commence at 6:00 p.m.)

The proposed agenda for the May 19, 2014 meeting currently is as follows:

1. Bulson – sign permit application – public hearing to commence at 6:00 p.m.
2. McGrath – area variance.
3. Mulinio – amendment to Planned Development District.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD May 19, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN, E. JOHN SCHMIDT, MARK BALISTRERI and CAROLINE TRZCINSKI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The members of the Zoning Board reviewed the draft minutes of the April 21, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the minutes of the April 21, 2014 meeting were unanimously approved without amendment.

The Zoning Board then opened the public hearing on the application by Charles Bulson for installation of a sign at property located at 1312 Route 7. 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 sign board, posted on the Town website, and mailed to owners of all adjacent properties. The Zoning Board Chairman requested Mr. Bulson to present an overview of the proposal. Mr. Bulson stated that he was seeking to install a 4' 6" x 4' 6" square commercial sign with lighting on 1312 Route 7. Mr. Bulson stated that there would be writing on both sides of the sign, and that the sign would be wood and constructed in a manner to be consistent with the residential area. Mr. Bulson had provided the Zoning Board members with specifications for lighting on the sign, with a proposal for a 12" angle shade gooseneck lighting fixture which will be down lighting from the top of the sign. The Zoning Board Chairman then opened the floor for the receipt of public comment. There were no members of the public wishing to comment on the application. The Chairman asked whether the Zoning Board members had any further questions

of the Applicant. Member Trzcinski asked whether there would be a timer put on the light for the sign. Mr. Bulson stated that there would be a photocell, so that the light would be off during the day, but would come on at night. Member Trzcinski asked whether there would be any shutoff during the night, or whether the light would shine all night. Mr. Bulson stated that he was seeking to have the light shine all night, but could put on a timer on the light if the Zoning Board members required this. Member Trzcinski inquired of Mr. Kreiger as to whether the Brunswick Town Code included any requirements for sign lighting. Mr. Kreiger stated that Town Code does not have any provisions regarding sign lighting. Member Hannan thought that the lighting issue was not material, since this was a relatively small sign. Member Trzcinski then inquired whether the commercial business was operated out of the residence or at other locations. Mr. Bulson stated that his business is principally construction manager and consultant to construction projects, and that he does work out of his residence at this location. Mr. Kreiger had previously determined that such use is a home occupation pursuant to the Brunswick Town Code. Chairman Steinbach inquired whether any of the remaining Board members had any questions or comments. Hearing none, the Zoning Board closed the public hearing on the sign application submitted by Charles Bulson. Attorney Gilchrist then reviewed the legal standard to be considered by the Zoning Board in connection with the consideration of the sign application. The Zoning Board generally determined that the installation of this sign was a reasonable use for this location, and was not otherwise injurious to neighborhood character or otherwise detrimental to public welfare. Following such deliberation, Chairman Steinbach entertained a motion pursuant to SEQRA. Member Schmidt made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Hannan. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, Member Schmidt made a

motion to approve the sign application for 1312 Route 7, which motion was seconded by Member Balistreri. The motion was unanimously approved, and the sign application submitted by Charles Bulson for property at 1312 Route 7 was approved.

The second item of business on the agenda was the continued deliberation and determination on the area variance application submitted by Christian McGrath for property located at 205 Bulson Road. The Zoning Board generally reviewed that this matter had been the subject of several meetings, including a public hearing, that the Zoning Board members had already deliberated on the statutory elements, but that the time in which a determination on the area variance application was extended upon consent of the Applicant to this meeting to be held on May 19, 2014, to allow the Applicant to pursue discussions with the adjoining property owner. Chairman Steinbach inquired of the Applicant as to whether he sought to submit any additional information to the Zoning Board in that regard. Matthew Turner, Esq., representing Christian McGrath, stated that despite several proposals and efforts to address the adjoining property owners' concerns, there were no agreements or resolutions reached with the adjoining property owners, and that his client was looking for the Zoning Board to render its determination on the area variance application. Attorney Gilchrist then reviewed the record, including the application documents and written record before the Zoning Board on this application, and confirmed that the public hearing had been held upon due notice, that the members of the Zoning Board had had the opportunity to review the property in question, that the Zoning Board members had deliberated on the evidence submitted and the legal standards applicable to area variances, and that a draft determination had been prepared for the Board's review and deliberation. Attorney Gilchrist also confirmed on the record that the Zoning Board had previously determined that this application was a Type II action under SEQRA, and no further

SEQRA review or determination was required. Thereupon, Chairman Steinbach reviewed the following provisions of the analysis of the statutory elements for area variance in light of the evidentiary record:

1. The Zoning Board of Appeals determines that the requested area variance will not result in an undesirable change in the character of the neighborhood, since both agricultural and residential uses exist in this general vicinity, but will create a potential detriment to nearby properties with respect to existing agricultural uses on the adjacent property located immediately to the east of 205 Bulson Road. In this regard, the Zoning Board members determine that having a residential structure within 5' of a property line would impact the ability of the adjacent property owner to continue using the property for agricultural purposes, with particular regard to having heavy farm equipment operating within 5' of a residential structure and also the application of fertilizers within 5' of a residential structure. The Zoning Board finds that allowing a residential structure to be located within 5' of the operation of heavy farm equipment and fertilizer application has the potential to impair the ability of the adjacent property owner to continue agricultural activities at that location. Moreover, while the Zoning Board is cognizant that the current owner of 205 Bulson Road raises no issue regarding these agricultural activities, any subsequent owner of 205 Bulson Road may in fact raise objections regarding the application of fertilizer and/or operation of heavy farm equipment within 5' of a residence.
2. The Zoning Board of Appeals determines that there does not appear to be a feasible alternative for the construction of the 2-story residential addition in a manner consistent with the setback requirements of the Brunswick Zoning Code, without significant financial investment for the relocation of the existing house. The Zoning Board of Appeals does find, however, that the proposed size of the 2-story residential addition could be reduced in size to reduce the total amount of the requested variance from applicable setback provisions.
3. The Zoning Board of Appeals determines that the requested variance is substantial. Under the Brunswick Town Code, a 25' side yard setback is required, whereas the proposed 2-story residential addition in its current location is only 5' from the side yard property line. The Zoning Board of Appeals determines this amount of variance to be substantial.
4. The Zoning Board of Appeals determines that the requested location of the 2-story residential addition does not in and of itself create an impact to the environment, but its proposed location does give rise to a potential environmental issue in terms of the existing adjacent agricultural use. The Zoning Board members determine that given existing agricultural uses, including the use of heavy farm equipment and application of fertilizers, having such existing agricultural uses within 5' of a residential structure may give rise to potential

environmental issues, most particularly noise.

5. The Zoning Board of Appeals determines that the need for the requested area variance is entirely self-created by the Owner. In this regard, the Zoning Board members determined that the Owner was aware of the need to obtain a building permit for any additions to 205 Bulson Road, especially in light of the fact that the Owner had previously received a building permit for the installation of a pool at that location. The Zoning Board members find that the rationale for proceeding with construction of the wood deck and 2-story residential addition under the contractor's mistaken belief that the existing building permit, which was obtained for the installation of a swimming pool, also covered the construction of a wood deck and 2-story residential addition, to be unpersuasive and not credible. The record supports the conclusion that the Owner was aware of the need to obtain a building permit for the installation of a swimming pool, and accordingly was, or should have been, aware that a building permit would be needed for the construction of a 2-story residential addition at this property. There is nothing in the record to support the conclusion that this lot is unique in any way.

Chairman Steinbach then inquired whether of the Zoning Board members had any comments, changes or other amendments to this analysis. The Zoning Board members concurred with the analysis of the legal standards and evidentiary record as reviewed. Chairman Steinbach then reviewed the proposed determination on the application, which provided that based on the Findings of Fact and Analysis as reviewed by the Zoning Board members, and upon review of the evidence in the record and all comments received during the public hearing, and in balancing the benefit to the Applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood, the Zoning Board of Appeals denies the requested area variance in this matter. The Zoning Board members unanimously concurred that such determination should be adopted. Thereupon, Chairman Steinbach stated that he would entertain a motion to adopt the proposed written decision on the McGrath area variance application, as reviewed by the Zoning Board members, as the final written determination concerning this application. Member Schmidt made a motion to adopt the written decision on the McGrath area variance application as reviewed by the Zoning Board of Appeals, which

motion was seconded by Member Hannan. The motion was unanimously approved, and the area variance application submitted by McGrath for property located at 205 Bulson Road was denied, as follows:

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

In the Matter of the Application for
Area Variance submitted by

CHRISTIAN MCGRATH,

Applicant,

DECISION

Application No. ZB2014-0048

For Property Located at 205 Bulson Road

An application has been made by Mr. Christian McGrath (hereinafter “Owner”) for property located at 205 Bulson Road. The Owner has made the area variance application in connection with the proposed completion of construction of a wood deck and 2-story residential addition to an existing house. The 2-story residential addition has a proposed footprint of 18’ x 22’. The commencement of construction of the wood deck and 2-story residential addition was undertaken without the required building permit, and otherwise violates the Town of Brunswick Zoning Code with respect to setback requirements.

In particular, construction of the proposed improvements was commenced by the Owner so that the location of the proposed 2-story residential addition is 5’ from the side yard property line located to the east. The Town of Brunswick Zoning Code requires a minimum 25’ side yard setback for this property.

The application for area variance was submitted and initially reviewed by the Brunswick Zoning Board of Appeals at its meeting held February 24, 2014. Thereafter, a public hearing regarding this application was held by the Zoning Board of Appeals at its meeting held March 17, 2014. At that public hearing the owners of the adjacent parcel located to the east of 205 Bulson Road spoke in opposition to the area variance application, specifically raising concerns regarding impact to property value, impact to future use of the property for residential purposes, impact to current agricultural activities, also noting that the current situation was entirely self-created by Mr. McGrath. The public hearing was closed by the Zoning Board of Appeals at its meeting held March 17, 2014. The Owner was allowed an opportunity to respond to public comments.

The members of the Zoning Board of Appeals deliberated on this application at meetings held March 17, 2014 and April 21, 2014. The Zoning Board of Appeals members also had the opportunity to review the property in question.

At the meeting of the Zoning Board of Appeals held April 21, 2014, the Owner stated that it was in communication with the owner of the adjacent property to the east in an effort to address his concerns. While the Zoning Board of Appeals was not in opposition to allowing such communications to continue in an effort to resolve issues, it informed the Owner that the time in which a final decision on this application must be made would expire prior to the Board's May 19, 2014 meeting, and therefore the Zoning Board of Appeals would need to act at its April 21, 2014 meeting unless such time was extended by consent of the Owner. Thereupon, on the record, the Owner consented to extend the time in which the Zoning Board of Appeals must make a determination on this application through and including the Zoning Board of Appeals meeting on May 19, 2014.

The Zoning Board of Appeals further deliberated on this matter at its meeting held May 19, 2014. The Zoning Board of Appeals confirmed that the record before the Board on this application, which has been reviewed and duly considered by the Board, is as follows:

1. Application dated February 21, 2014.
2. Correspondence of Attorney Matthew Turner, Esq. dated February 21, 2014.
3. Correspondence of Attorney Matthew Turner, Esq. dated March 14, 2014, with attached exhibits:
 - A. aerial photograph;
 - B. receipt for building permit issued by Town of Brunswick Building Department for installation of swimming pool;
 - C. aerial photograph; and
 - D. series of photographs.
4. Survey Map, 205 Bulson Road, prepared by Cornerstone Surveying & Mapping, dated 1/30/2014.

Based upon the deliberations held by the Zoning Board of Appeals members, and observation of the property in question, and consideration of the application record, the following findings of fact and determinations are made:

FACT FINDINGS

Based on the record and deliberations of the Zoning Board members, the Zoning Board of Appeals makes the following findings of fact:

1. The Owner commenced construction of a wood deck and 2-story residential addition, with a footprint of 18' x 22', at property located at 205 Bulson Road.

2. The 2-story residential addition is located 5' from the right side yard property line, located on the eastern side of the lot.
3. The parcel located at 205 Bulson Road is located in the A-40 Zoning District pursuant to the Brunswick Zoning Code and Zoning Map.
4. The adjacent property located immediately to the east is also situated in the A-40 Zoning District pursuant to the Brunswick Zoning Code and Zoning Map, and is currently used for agricultural purposes with no current existing structures.
5. The construction of the wood deck and 2-story residential addition at 205 Bulson Road was commenced by the Owner without first obtaining the required building permit from the Town of Brunswick Building Department.
6. The Owner had commenced construction of the wood deck and 2-story residential addition in or about October 2013. The Owner failed to contact the Brunswick Building Department for inspection of the foundation which was installed for the residential addition, nor for any further inspections of subsequent construction.
7. The Owner had previously obtained a building permit from the Town of Brunswick Building Department for the installation of a swimming pool at 205 Bulson Road.
8. The contractor retained by the Owner for the construction of the wood deck and 2-story residential addition stated that he was aware a building permit had been issued to the Owner from the Brunswick Building Department, but further stated that he was under the impression that such building permit covered the construction of the wood deck and 2-story residential addition at issue on this appeal.
9. A Stop Work Order was issued by the Town of Brunswick Building Department concerning the construction of the wood deck and 2-story residential addition at issue on this appeal.
10. A survey was completed for the subject property confirming that the 2-story residential addition is located 5' from the eastern side yard property line.
11. The Brunswick Zoning Code requires a side yard setback of 25' in the A-40 Zoning District.
12. Pursuant to the Brunswick Zoning Code, the permitted uses in the A-40 Zoning District include farms and also private, single-family dwellings.
13. The cost of relocating the house on the lot located at 205 Bulson Road so that the proposed 2-story residential addition complies with the required setbacks for the

A-40 Zoning District has been estimated by the Owner at approximately \$52,000.

14. The owners of the adjacent property located immediately to the east are currently using such property for agricultural purposes.
15. The owners of the adjacent property located immediately to the east also own property directly on the opposite side of Bulson Road, on which is located their residence.
16. The owners of the adjacent property located immediately to the east have stated that they reserve the right to construct homes on such property in the future.

ANALYSIS

6. The Zoning Board of Appeals determines that the requested area variance will not result in an undesirable change in the character of the neighborhood, since both agricultural and residential uses exist in this general vicinity, but will create a potential detriment to nearby properties with respect to existing agricultural uses on the adjacent property located immediately to the east of 205 Bulson Road. In this regard, the Zoning Board members determine that having a residential structure within 5' of a property line would impact the ability of the adjacent property owner to continue using the property for agricultural purposes, with particular regard to having heavy farm equipment operating within 5' of a residential structure and also the application of fertilizers within 5' of a residential structure. The Zoning Board finds that allowing a residential structure to be located within 5' of the operation of heavy farm equipment and fertilizer application has the potential to impair the ability of the adjacent property owner to continue agricultural activities at that location. Moreover, while the Zoning Board is cognizant that the current owner of 205 Bulson Road raises no issue regarding these agricultural activities, any subsequent owner of 205 Bulson Road may in fact raise objections regarding the application of fertilizer and/or operation of heavy farm equipment within 5' of a residence.
7. The Zoning Board of Appeals determines that there does not appear to be a feasible alternative for the construction of the 2-story residential addition in a manner consistent with the setback requirements of the Brunswick Zoning Code, without significant financial investment for the relocation of the existing house. The Zoning Board of Appeals does find, however, that the proposed size of the 2-story residential addition could be reduced in size to reduce the total amount of the requested variance from applicable setback provisions.
8. The Zoning Board of Appeals determines that the requested variance is substantial. Under the Brunswick Town Code, a 25' side yard setback is required, whereas the proposed 2-story residential addition in its current location is only 5' from the side yard property line. The Zoning Board of Appeals determines this amount of variance to be substantial.

9. The Zoning Board of Appeals determines that the requested location of the 2-story residential addition does not in and of itself create an impact to the environment, but its proposed location does give rise to a potential environmental issue in terms of the existing adjacent agricultural use. The Zoning Board members determine that given existing agricultural uses, including the use of heavy farm equipment and application of fertilizers, having such existing agricultural uses within 5' of a residential structure may give rise to potential environmental issues, most particularly noise.
10. The Zoning Board of Appeals determines that the need for the requested area variance is entirely self-created by the Owner. In this regard, the Zoning Board members determined that the Owner was aware of the need to obtain a building permit for any additions to 205 Bulson Road, especially in light of the fact that the Owner had previously received a building permit for the installation of a pool at that location. The Zoning Board members find that the rationale for proceeding with construction of the wood deck and 2-story residential addition under the contractor's mistaken belief that the existing building permit, which was obtained for the installation of a swimming pool, also covered the construction of a wood deck and 2-story residential addition, to be unpersuasive and not credible. The record supports the conclusion that the Owner was aware of the need to obtain a building permit for the installation of a swimming pool, and accordingly was, or should have been, aware that a building permit would be needed for the construction of a 2-story residential addition at this property. There is nothing in the record to support the conclusion that this lot is unique in any way.

DETERMINATION

Based on the findings of fact and analysis stated above, and upon the review of the evidence in the record and all comments received during the public hearing, and in balancing the benefit to the Applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood by such grant, the Zoning Board of Appeals hereby denies the requested area variance in this matter.

The next item of business on the agenda was the application submitted by David Mulinio for amendment to a Planned Development District. This matter is before the Zoning Board of Appeals on referral from the Town Board for recommendation. David Mulinio was present, and updated the Zoning Board on the sound study which had been completed at the property for projected noise from the proposed amendment to the PDD. Mr. Mulinio explained that Sterling Environmental Engineering had been retained to assess noise impacts, and that the Sterling

Letter Report had been reviewed by Laberge Engineering, the Town's Consulting Engineer on the review of the PDD amendment application, and that Laberge had confirmed that based upon the noise assessment, there were no significant offsite noise impacts associated with the proposed PDD amendment. Attorney Gilchrist stated that the Brunswick Planning Board had completed its review and written recommendation on the PDD amendment, and that copies of the Planning Board recommendation had been provided to the Zoning Board members. Chairman Steinbach inquired whether any members had any questions or comments for the Applicant. Members Hannan, Schmidt, and Trzcinski stated that the information was adequate and that they had no questions. Member Balistreri asked Mr. Mulinio about the projected number of customers, and whether the parking at the site was adequate to handle 300-700 potential customers. Mr. Mulinio reviewed the site plan with Member Balistreri, showing the limits of the existing parking area and outlining the capacity of the parking lot. Member Hannan then questioned whether Mr. Mulinio would have staff to direct traffic and parking. Mr. Mulinio stated that he will have 50-60 employees for each of the 5 weekends for the seasonal activities that he is seeking through the PDD amendment, which will include adequate employees for traffic flow and parking. Member Balistreri inquired whether Mr. Mulinio would have adequate emergency services on staff for that number of expected customers. Mr. Mulinio stated that he will have both law enforcement and EMS onsite during these seasonal activities he is seeking through the PDD amendment. The Zoning Board members generally reviewed the written recommendation of the Planning Board, and concurred with the Planning Board's findings and recommendation. The Zoning Board members would like to add the additional recommendation that the owner require onsite law enforcement and emergency services during the Fall seasonal activities, and also have an

employee dedicated for traffic flow and parking. The Zoning Board will have a written recommendation prepared for review at its June 16 meeting.

Two items of new business were discussed.

The first item of new business discussed was the proposed amendment to the Duncan Meadows Planned Development District. This matter is before the Zoning Board of Appeals upon referral by the Town Board seeking a recommendation on the proposed PDD amendment. Peter Yetto, P.E. and Peter Amato were present. Mr. Amato stated that the legal entity seeking to acquire title to this last phase of the Duncan Meadows PDD is BPP2, LLC. Mr. Yetto presented the concept plan for the proposed amendment, which addresses the last construction phase of the project. Mr. Yetto explained that the current approval provides for 78 townhouse – style condominiums, both above and below the existing ROUSE facility. The proposed amendment is to allow the construction of 77 apartment units in the area above the ROUSE facility and adjacent to the 50-unit apartment building which is nearing construction completion, and leave the lower field below the ROUSE facility as greenspace. Mr. Amato explained that while the current approval allows for 78 units, his company proposes to construct the same type of apartment building which is being constructed during the second phase of the Duncan Meadows PDD, which provides for 11 units per building. Mr. Amato explained that he is seeking approval to construct 7 buildings, 11 units per building, in the same general footprint of the proposed layout of the condominium buildings above the ROUSE facility and adjacent to the 50-unit apartment building nearing construction completion. Mr. Yetto continued by stating that there would still be 2 parking spaces per unit provided, that the water and sewer demand would not substantially change, that the projected traffic would not substantially change, and that impacts to school district would not substantially change. Mr. Yetto did explain that there would

be a slight increase in impervious surfaces and therefore the Stormwater Pollution Prevention Plan would need to be amended. Member Balistreri inquired whether the private road for this section of the Duncan Meadows PDD would connect in any way to the Country Way Road which is part of the ROUSE project. Mr. Yetto stated that there would be no connection to the Country Way Road. Mr. Yetto also explained that the original plan for sewer had included a pump station, which was required for the lower field, since the lower field was at a lower elevation and required the pumping of the wastewater to the BSD #6 pump station. Mr. Yetto explained that with the proposal to eliminate the units in the lower field, and construct units only in the upper field adjacent to the 50-unit apartment building where construction is being completed, all wastewater flow will be by gravity without the need for a pump station. Member Balistreri asked whether the project included fire hydrants. Mr. Yetto stated that the fire hydrants are included in the project design and meet all Fire Code requirements. The Zoning Board members concurred that they would like to review the concept site plan being prepared by Mr. Yetto, as well as having a comparison presented as to what is currently approved for this section of the Duncan Meadows project and what is being proposed through the amendment. Also, Mr. Yetto stated that he was completing his summary regarding traffic, water, sewer, school, and drainage issues associated with the proposed amendment, and would be submitting that to the Zoning Board for its review as well. This matter is placed on the June 16 agenda for further discussion.

The second item of new business discussed was an application by Kenneth and Jennifer Colwill for an area variance for the construction of a garage at 46 Spring Landing Boulevard (Parcel ID #113.4-1-12). The application documents state that the property owner is seeking to convert an existing garage to residential use, and construct a new attached garage. Given the

configuration of the lot, the corner of the new proposed garage will require an area variance for side yard setback, with a 10' side yard setback being proposed where the code requires a 15' side yard setback. Member Hannan made a motion to accept the application as complete and schedule a public hearing for June 16, 2014 at 6:00 p.m., which motion was seconded by Member Balistreri. The motion was unanimously approved, and the area variance application by Colwill was deemed complete and a public hearing has been scheduled for June 16, 2014 commencing at 6:00 p.m.

The index for the May 19, 2014 meeting is as follows:

1. Bulson – sign permit – granted.
2. McGrath – area variance – denied.
3. Mulinio – application to amend Planned Development District – 6/16/14 (recommendation).
4. BPP2, LLC – amendment to Duncan Meadows Planned Development District – 6/16/14 (recommendation).
5. Colwill – area variance – 6/16/14 (public hearing to commence at 6:00 p.m.).

The proposed agenda for the June 16, 2014 meeting currently is as follows:

1. Colwill – area variance – public hearing to commence at 6:00 p.m.
2. Mulinio–proposed amendment to Planned Development District (recommendation).
3. BPP2, LLC – proposed amendment to Duncan Meadows Planned Development District (recommendation).

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD June 16, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, E. JOHN SCHMIDT, MARK BALISTRERI and CAROLINE TRZCINSKI.

ABSENT were JAMES HANNAN and JOHN KREIGER, Code Enforcement Officer.

The Zoning Board members reviewed the draft minutes of the May 19, 2014 meeting. One correction was noted. On page 14 of the draft minutes, under the section pertaining to the index for the May 19 meeting, item #3 should be amended so that the date reads 6/16/2014. Member Trzcinski then made a motion to approve the May 19, 2014 minutes with the noted correction. Member Schmidt seconded the motion. The motion was unanimously adopted, and the May 19, 2014 meeting minutes were approved subject to the noted correction.

The Zoning Board of Appeals then opened the public hearing on the area variance application submitted by Kenneth and Jennifer Colwill for property located at 46 Spring Landing Boulevard (Parcel ID #113.4-1-12). The Notice of Public Hearing was read into the record, and that notice having been published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach then opened the floor for the receipt of public comment on the application. No members of the public wished to submit any comment. Chairman Steinbach then repeated whether anyone in the audience sought to submit any comment either in favor of, or opposed to, the application. No members of the public wished to submit any comment. Thereupon, Chairman Steinbach closed the public hearing on the area variance application submitted by Colwill.

The Zoning Board then proceeded to address the area variance application by Colwill. Kenneth Colwill, 46 Spring Landing Boulevard, was present, and Chairman Steinbach inquired of Mr. Colwill as to whether there were any changes to the area variance application that should be considered by the Zoning Board members. Mr. Colwill stated that there were no changes to the application. The application seeks a sideyard variance for the construction of an attached residential garage. The Brunswick Zoning Ordinance requires a 15-foot sideyard setback, and the Applicant seeks an area variance to allow for a 10-foot sideyard setback. Chairman Steinbach then asked the Zoning Board members whether they had any questions or comments on the application. Member Schmidt noted that the application documents state that the area variance was required because the Applicant could not construct the garage in compliance with the setback requirements due to the location of the septic field for the lot, but that the map submitted in support of the area variance application did not identify the location of the septic field. Member Schmidt requested Mr. Colwill to identify the location of the septic field. Mr. Colwill then identified the location of the septic field on the maps submitted in support of the application, confirming that compliance with the setback requirements would place the proposed garage in conflict with the location of the existing on-site septic field. Member Trzcinski raised a question concerning the notice of the public hearing, and whether any placard had been placed on the property at 46 Spring Landing Boulevard noting that a public hearing would be held. Attorney Gilchrist stated that the New York Town Law and the Brunswick Zoning Ordinance require notification of the public hearing through publication in the official newspaper of the Town, and mailing notices to the parties involved. As a matter of practice, the Zoning Board has been publishing the Notice of Public Hearing in the official newspaper of the Town, placing the notice on the Town sign board, posting the notice on the Town website, and mailing a copy of

the notice of public hearing to all adjacent property owners. The Brunswick Zoning Ordinance does not require that a placard be placed on the subject property. Attorney Gilchrist stated that he will coordinate with Mr. Kreiger as to any past practice of the Zoning Board in this regard. The Zoning Board members had no further questions or comments on the application. Chairman Steinbach then inquired whether the Zoning Board members were ready to proceed with deliberations and action on the application. The Zoning Board members generally concurred that the application was complete and ready for deliberation. Attorney Gilchrist then stated for the record that this application seeks an area variance for a residential use, and therefore constitutes a Type II action pursuant to SEQRA, and no further environmental impact review is required pursuant to SEQRA. Chairman Steinbach then directed the review of the elements to be considered by the Zoning Board regarding the area variance application. Regarding the issue of whether the area variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Schmidt stated that he felt there would be no impact to the character of the neighborhood, given that the proposed garage would simply replace an existing garage that had been converted to residential use, and further that the lot at 46 Spring Landing Boulevard was bordered by vacant land which was not approved for a building lot. The Zoning Board members generally concurred that the area variance would not change the character of the neighborhood or create a detriment to any nearby property. On the issue of whether the benefit sought by the Applicant could be achieved by another feasible method other than the area variance, Member Trzcinski stated that she felt there was no other feasible method to construct the garage, particularly since it would interfere with an existing onsite septic system location. On the issue of whether the area variance is substantial, Chairman Steinbach noted that while a 15-foot side yard setback is required, and the Applicant is

seeking a 5-foot variance to allow the garage to be 10-feet from the side yard line, in this case he did not feel the 5-foot variance was substantial, particularly since there was no homeowner or other structure adjacent to the sideline and that the adjacent property is not approved as a building lot. The remaining Zoning Board members concurred with that opinion. As to the issue of whether the proposed area variance would have an adverse affect on the physical or environmental conditions in the neighborhood, the Zoning Board members generally concurred that there would be no adverse affect on the physical or environmental conditions in the neighborhood, that there were no adjacent neighbors in proximity to the proposed garage and that the property is vacant and not approved as a building lot, and that no residents in the Spring Landing neighborhood objected to the variance. As to the issue of whether the difficulty is self-created, Chairman Steinbach did note that the issue has been self-created since the property owner converted an existing garage into residential use and is proposing to build a new garage requiring the variance, but that such consideration is relevant but does not preclude the variance. Member Schmidt stated that he felt the lot at 46 Spring Landing Boulevard was an odd shape, in the nature of a pie-shaped lot, which in part resulted in the need for the area variance. On the overall issue of balancing the benefit to the Applicant in granting the area variance as opposed to any detriment to the neighborhood, the Zoning Board members generally concurred that there was a benefit to the Applicant but no significant impact to the neighborhood. The Zoning Board members also reiterated that there were no objections from any of the Spring Landing neighbors. In light of that deliberation, Member Trzcinski then made a motion to grant the area variance to Kenneth and Jennifer Colwill for the proposed garage addition located at 46 Spring Landing Boulevard, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance granted.

The next item of business on the agenda was the referral of the Mulinio Planned Development District amendment application from the Town Board for recommendation. The Zoning Board members had previously deliberated on this matter at its meetings held April 21 and May 19, and had directed that a draft recommendation be prepared for their review at the June 16 meeting. Upon review of the draft recommendation, the Zoning Board members then adopted the following recommendation on the application by David Mulinio to amend the Mulinio Planned Development District:

WHEREAS, the Town Board of the Town of Brunswick (“Town Board”) has received an application from David Mulinio (“Applicant”) for an amendment to the Planned Development District (“PDD”) approval that currently allows the operation of a paintball facility on 13.6 acres of land located at the intersection of Oakwood Avenue and Farrell Road; and

WHEREAS, the application for an amendment to the PDD seeks approval to expand the hours of operation from the current schedule of only Saturday and Sunday 9:00 a.m. to 5:00 p.m., to add Thursday 5:00 p.m. to 10:00 p.m., Friday and Saturday 5:00 p.m. to 11:00 p.m., and Sunday 5:00 p.m. to 9:00 p.m. during the Fall season each year (beginning on the last Thursday in September through the last Sunday in October) in connection with adding an additional paintball attraction; and

WHEREAS, the Town Board has referred the Mulinio PDD amendment application to the Town of Brunswick Planning Board (“Planning Board”) and Town of Brunswick Zoning Board of Appeals (“Zoning Board of Appeals”) for review and recommendation; and

WHEREAS, the Applicant presented the proposal to the Zoning Board of Appeals at its meetings held April 21, 2014; May 19, 2014; and June 16, 2014, and discussed the proposed project with the Zoning Board members; and

WHEREAS, the Zoning Board members also had the opportunity to review the written recommendation of the Brunswick Planning Board concerning this application, dated May 15, 2014, and generally concur with the Findings and Conclusions of the Brunswick Planning Board; and

WHEREAS, the Zoning Board members, upon further deliberation, determined that additional recommendations should be made concerning availability of law enforcement and emergency services at the site as well as traffic flow and parking at the site;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Appeals of the Town of Brunswick in regular session duly convened as follows:

1. The Zoning Board of Appeals generally concurs with the Findings and Conclusions of the Brunswick Planning Board in its written recommendation dated May 15, 2014 concerning this proposed PDD amendment, and incorporates the Findings and Conclusions of the Brunswick Planning Board's May 15, 2014 written recommendation herein.

2. In addition, the Brunswick Zoning Board of Appeals further determines and recommends to the Town Board that it consider the following requirements as conditions to any action: (a) law enforcement and emergency services must be present on site during the Fall seasonal activities, and (b) an employee must be dedicated to traffic flow and parking during the Fall seasonal activities to address projected additional customers.

The third item of business on the agenda was the application submitted by BPP II, LLC for a third amendment to the Duncan Meadows Planned Development District. Peter Amato and Dr. Paren Edwards of BPP II, LLC were present, together with their consulting engineer, Peter Yetto, P.E. Also in attendance was Mark Kestner, P.E., the Town consulting and review engineer on the Duncan Meadows PDD amendment application. Mr. Yetto provided an overview of the additional information that had been submitted on this application, including a site plan and supplemental environmental impact information to supplement the prior EIS which had been prepared for this project. Member Trzcinski then asked about the use of the field located below the existing ROUSE facility, which Mr. Yetto was referring to as the "Phase 3" area of the project. Mr. Yetto stated that BPP II, LLC had no plans to develop that property, and was originally proposing to keep that area as open space, but that members of the Town Board and Planning Board thought that the area should not be restricted as open space. Dr. Edwards stated that the Applicant had offered to the Town Board to keep the lower field as forever wild, but that members of the Town Board and Planning Board felt it might be better to keep options open for any potential future use of the lower field. Dr. Edwards reaffirmed that the Applicant has no plans to develop this area, but that if the Town wanted to reserve options for any future development on the lower field, then BPP II, LLC would do whatever the Town wanted.

Attorney Gilchrist noted for the record that while he was not present for the June 5th Planning Board meeting, he had been present at the prior Town Board and other Planning Board meetings on this application, and noted that his recollection was that one Town Board had raised a question regarding restricting the future use of this lower field, and that members of the Planning Board merely raised the issue of potential continued agricultural use of the lower field, and not for a future residential/commercial development. Member Trzcinski stated that she felt the current agricultural use should be allowed to continue, and that the field should not be made forever wild, because those areas tend to overgrow with brush. Member Schmidt asked about whether such a restriction on that area could be amended in the future. Attorney Gilchrist generally reviewed the option of restricting the parcel, and that the specific language of any restriction would determine whether it could be amended in the future, and the restriction would also identify the party who could enforce such restrictions and also the party who could amend the terms of the restriction in the future. Attorney Gilchrist did state that with respect to conservation easements, any amendment in the future generally do not allow for a change in the purpose and intent of the restriction, and that future residential/commercial development is generally not allowed as an amendment to a conservation easement. Member Balistreri asked whether the concern of the Town was the upkeep of that lower field in the future if it is restricted as open space. Member Trzcinski said that was her concern, that it would be better use of the land to keep it in agricultural use, and also to keep it on the tax roll. Chairman Steinbach then asked whether the Applicants had any further submissions to make to the Zoning Board for consideration. Hearing none, Chairman Steinbach then asked whether Mr. Kestner had any comments on his review of the application materials for consideration by the Zoning Board members. Mr. Kestner did state that the Planning Board members did raise a question regarding

having the traffic from all of the proposed 77 apartment units utilizing one access road, as opposed to the prior approval which separated that traffic between two access roads. Mr. Kestner also raised the issue regarding the sidewalk/walking area adjacent to McChesney Avenue Extension, and whether that walking area should be extended to the ROUSE facility. Mr. Yetto and Dr. Edwards stated that it was their understanding that prior approvals for this project did not require the sidewalk/walking area to be extended past the existing entrance road to the Duncan Meadows project on the McChesney Avenue Extension. Attorney Gilchrist stated that a review of the original approval for this project, as well as the two approved amendments to this project, will be undertaken. Mr. Kestner also noted that the layout of the internal road was changed from a cul-de-sac to a T-turnaround layout, and that this will need to be reviewed by the Fire Department for emergency access. Mr. Kestner also stated the Planning Board raised the issue of economic effect on the Town by converting the approved use from condominium/townhome to apartment use. Finally, Mr. Kestner did state that the Planning Board raised the issue of the use of the lower field, which has already been discussed by the Zoning Board. Mr. Yetto stated that he had designed the project to provide for access by emergency vehicles, and compliance with applicable fire code provisions. Member Balistreri stated that emergency access was important at these types of facilities, and review by the Fire Department will be required. Mr. Yetto stated that he would coordinate with the Fire Department. Attorney Gilchrist then reviewed procedural status, stating that the Planning Board will be reviewing a draft recommendation at its meeting to be held June 19, and if adopted by the Planning Board at that meeting, the Planning Board's recommendation would be forwarded to the Zoning Board members for their review and consideration. Attorney Gilchrist also stated that the Town Board would ultimately be scheduling the public hearing on this application.

Member Schmidt then stated his opinion that there should be some restriction on the future use of the lower field to not allow any additional residential units, since this project had been reviewed and approved for a total number of units, which were still going to be built but simply located in other areas of the project site, and that if additional residential or other units were allowed in the lower field, then the total number of units for the Duncan Meadows project would exceed the originally-approved 216 units. Member Schmidt felt that the original 216-unit approved density should continue to be the maximum density for this project, wherever the units are ultimately constructed on the project site. This matter has been placed on the July 21 agenda for consideration of the Zoning Board recommendation on this application.

Mr. Kreiger was not present to review any new applications, and therefore no new business was discussed nor placed on the July 21 agenda.

The index for the June 16, 2014 meeting is as follows:

1. Colwill – area variance – granted.
2. Mulinio – amendment to Planned Development District – recommendation adopted.
3. BPP II, LLC – Duncan Meadows Planned Development District amendment – 7/21/14.

The proposed agenda for the July 21, 2014 meeting currently is as follows:

1. BPP II, LLC – Duncan Meadows Planned Development District amendment - recommendation.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD July 21, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN, E. JOHN SCHMIDT, MARK BALISTRERI and CAROLINE TRZCINSKI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The draft minutes of the June 16, 2014 meeting were reviewed by the Zoning Board members. Upon motion by Member Trzcinski, seconded by Member Hannan, the draft minutes of the June 16, 2014 meeting were unanimously approved without amendment.

The first item of business on the agenda was the referral by the Town Board of the application submitted by BPP II, LLC for a proposed third amendment to the Duncan Meadows Planned Development District. The Zoning Board members had previously deliberated on this matter at its meeting held May 19, 2014 and June 16, 2014, and had directed that a draft recommendation be prepared for their review at the July 21, 2014 meeting. Upon review of the draft recommendation, the Zoning Board members then adopted the following recommendation on the application by BPP II, LLC for a third amendment to the Duncan Meadows Planned Development District:

TOWN OF BRUNSWICK ZONING BOARD OF APPEALS REGULAR MEETING

July 21, 2014

RESOLUTION ADOPTING A RECOMMENDATION ON THE PROPOSED THIRD AMENDMENT TO THE DUNCAN MEADOWS PLANNED DEVELOPMENT DISTRICT

WHEREAS, the Town Board of the Town of Brunswick (“Town Board”) received an application by ECM Land Development, LLC (“Owner”) for a Planned Development District (“PDD”) seeking approval for a mixed use residential project consisting of 78 townhouse-style condominium units, 88 traditional condominium units, and 50 senior citizen apartment units, located on approximately 91 acres of land bounded by McChesney Avenue and McChesney Avenue Extension; and

WHEREAS, the Town Board approved the Duncan Meadows PDD pursuant to Resolution No. 62 of 2010, duly adopted on August 12, 2010; and

WHEREAS, the Town Board approved a first amendment to the Duncan Meadows PDD to eliminate an age restriction associated with the 50 rental units pursuant to Resolution No. 86 of 2012, duly adopted on December 13, 2012; and

WHEREAS, the Town Board approved a second amendment to the Duncan Meadows PDD to allow for the construction of 88 apartment units in place and instead of the previously-approved 88 traditional condominium units, pursuant to Resolution No. 74 of 2013, duly adopted on October 10, 2013; and

WHEREAS, the Duncan Meadows PDD approval also included 78 townhouse-style condominium units located in areas known and referred to as Phase 2 and Phase 3 of the project; and

WHEREAS, BPP II, LLC has submitted an application to the Brunswick Town Board to further amend the Duncan Meadows PDD (the “Third Amendment”); and

WHEREAS, the Third Amendment seeks to allow the construction of 77 apartment units to be located in the total of 7 buildings, 11 units each, in place and instead of the previously approved 78 townhouse-style condominium units approved for Phase 2 and Phase 3, and to locate such 77 apartment units entirely within the area known as Phase 2; and

WHEREAS, the Town Board has referred the Third Amendment to the Duncan Meadows PDD to the Town of Brunswick Planning Board (“Planning Board”) and the Town of Brunswick Zoning Board of Appeals (“Zoning Board of Appeals”) for review and recommendation; and

WHEREAS, the Applicant presented the proposal to the Zoning Board of Appeals at its meeting held May 19, 2014; and June 16, 2014, and discussed the proposed project with the Zoning Board members; and

WHEREAS, the Zoning Board members also had the opportunity to review the written recommendation of the Brunswick Planning Board concerning this Third Amendment, dated June 19, 2014, and generally concur with the findings and conclusions of the Brunswick Planning Board; and

WHEREAS, the Zoning Board members, upon further deliberation, determined that the

area identified and referred to as Phase 3 of the project site, in which the Applicant is now eliminating any construction activities, should be allowed to continue in agricultural use;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Appeals of the Town of Brunswick in regular session duly convened as follows:

1. The Zoning Board of Appeals generally concurs with the findings and conclusions of the Brunswick Planning Board in its written recommendation dated June 19, 2014 concerning this proposed Third Amendment to the Duncan Meadows PDD, and incorporates the findings and conclusions of the Brunswick Planning Board's June 19, 2014 written recommendation herein.

2. In addition, the Brunswick Zoning Board of Appeals further determines and recommends that the Town Board allow the continued use of the area referred to as Phase 3 of the project site for continued agricultural use, rather than restricting the area to be left "forever wild"; and further, that in no case should any additional residential units be approved for the Phase 3 area of the project site as part of a future amendment to the Duncan Meadows PDD, since the overall density of this project as originally approved by the Town Board for the Duncan Meadows PDD will be fully constructed and utilized on the balance of the Duncan Meadows PDD project site, and that the area known as the Phase 3 area of the project site should not be utilized for any additional units for this PDD project.

Four items of new business were discussed.

The first item of new business discussed was an area variance application submitted by John Mulinio, 21 Cooper Avenue, seeking area variances in connection with the construction of a storage shed and playhouse at property located at 21 Cooper Avenue. The variances sought by the Applicant include a side yard setback variance, rear yard setback variance, and height variance. John Mulinio was present on the application. Chairman Steinbach stated that the photographs attached to the variance application showed the storage shed being nearly fully constructed, and asked why the structure was built without first seeking the variances. Mr. Mulinio stated that he didn't know he needed to obtain the variances, and that he had replaced an old shed at that location with this new structure. Mr. Kreiger confirmed that he had received a complaint from a neighbor, had inspected the site, and had issued a Stop Work Order until the variance issues were addressed by the Zoning Board. Mr. Mulinio confirmed that he had

received the Stop Work Order, and has not engaged in any further construction on the storage building. Member Trzcinski inquired why the storage shed has two-stories. Mr. Mulinio stated that the first floor was for storage, but that the second floor was a playhouse for his children. Mr. Mulinio confirmed that there were no bathroom facilities in the structure. Member Balistreri noted that the storage shed/playhouse was located next to an in-ground pool, and asked whether the in-ground pool had any fence around it. Mr. Mulinio stated that there was no fence around the swimming pool. Member Trzcinski raised an issue concerning people jumping off the balcony of the second story of this structure into the pool, and that this presented a safety issue. Mr. Mulinio stated that his children were small, and not able to get over the railing on the balcony of the second floor of this structure. Member Trzcinski stated that this may become a safety issue in the future. Upon review of the site plan sketch included in the application, the Zoning Board members confirmed with Mr. Kreiger the extent of the variances required. Mr. Kreiger stated that a side yard setback variance is required, with the structure located 4' from the side yard line where the Town Code requires a 10' side yard setback. Mr. Kreiger confirmed that a rear yard setback variance was required, with the structure located 3' 8" from the rear property line, where the Town Code requires a rear yard setback of 20'. Mr. Kreiger also confirmed that a height variance was required, with the structures height being 18', whereas the Town Code limit for this structure is 12'. Member Trzcinski again inquired why a second floor was necessary, and did Mr. Mulinio need a second floor on this shed. Mr. Mulinio said the second floor was a playroom for his kids, and that there were only internal stairs leading to the second floor within the structure. Member Hannan inquired as to the total size of this lot. Mr. Kreiger stated that lots in this area generally were about one half acre in size. Upon further discussion, the Zoning Board members determined that the application was complete for purpose

of scheduling a public hearing. This matter is scheduled for public hearing to commence at 6:00 p.m. on August 18, 2014.

The second item of new business discussed was an application submitted by Ray Sign Co. on behalf of Robert Pollock, Pollock Companies, for the Brunswick Plaza located at 720 Hoosick Road. The application seeks an area variance for the installation of a wall sign for the Dollar Tree store to be located in the Brunswick Plaza. The Applicant seeks a variance to allow a 48" round logo and 42" lettering on the wall sign, where the Town Code allows a maximum of 36" logo and lettering. Russ Hazen, owner of Ray Sign Co., was present to answer any questions. The Zoning Board members determined that the application contained adequate information for scheduling a public hearing. This matter is set for public hearing at 6:10 p.m. on August 18, 2014.

The third item of new business discussed was an area variance application submitted by Ray Sign Co. on behalf of Wal-Mart Real Estate Business Trust for property located in the Wal-Mart Plaza located at 760 Hoosick Road. The Applicant seeks permission to install a single sided wall sign with internal illumination, measuring 27" x 104", showing the Subway logo on the exterior of the Wal-Mart building. This application seeks a variance for the total number of signs located on the Wal-Mart building. Russ Hazen, owner of Ray Sign Co. was present to answer any questions on the application. The Zoning Board members reviewed the information contained in the application, and determined that there was adequate information to schedule a public hearing. This matter is set for public hearing on the area variance application for 6:20 p.m. on August 18, 2014.

The fourth item of new business discussed was an application for area variance submitted by Lend Lease Inc. on behalf of BK Troy Holdings, LLC for the installation of signage at the

Burger King restaurant located at 747 Hoosick Road. The Applicant seeks approval to replace existing signage on the Burger King restaurant as part of the remodeling of the restaurant. The variances sought include the total number of signs on the exterior of the building, as well as the size of the Burger King logo signs. The Zoning Board members reviewed the application materials, and determined they were complete for purposes of scheduling the public hearing. This matter is scheduled for public hearing to be held at 6:30 p.m. on August 18, 2014.

The index for the July 21, 2014 meeting is as follows:

1. BPP II, LLC – third amendment to Duncan Meadows Planned Development District – recommendation adopted.
2. Mulinio – area variance – 8/18/14 (public hearing to commence at 6:00 p.m.).
3. Ray Sign Co. (Pollock Companies, owner) – area variance (sign) – 8/18/14 (public hearing to commence at 6:10 p.m.).
4. Ray Sign Co. (Wal-Mart Real Estate Business Trust, owner) – area variance (sign) – 8/18/14 (public hearing to commence at 6:20 p.m.).
5. Lend Lease, Inc. (BK Troy Holdings, LLC, owner) – area variance (sign) – 8/18/14 (public hearing to commence at 6:30 p.m.).

The proposed agenda for the August 18, 2014 meeting currently is as follows:

1. Mulinio – area variance – public hearing to commence at 6:00 p.m.
2. Ray Sign Co. (Pollock Companies, owner) – area variance (sign) - public hearing to commence at 6:10 p.m.
3. Ray Sign Co. (Wal-Mart Real Estate Business Trust, owner) – area variance (sign) – public hearing to commence at 6:20 p.m.
4. Lend Lease, Inc. (BK Troy Holdings, LLC, owner) – area variance (sign) – public hearing to commence at 6:30 p.m.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD August 18, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN, E. JOHN SCHMIDT, MARK BALISTRERI and CAROLINE TRZCINSKI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The Zoning Board members reviewed the draft minutes of the July 21, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the draft minutes of the July 21, 2014 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by John Mulinio for property located at 21 Cooper Avenue. John Mulinio was present on the application. Chairman Steinbach inquired of Mr. Mulinio whether there were any changes or new information concerning the application. Mr. Mulinio stated that there were no changes or additional information. The Zoning Board then opened the public hearing on the area variance application. The notice of public hearing was read into the record, noting that the public notice had been published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach then opened the floor for receipt of public comment on the application. First, Chairman Steinbach requested any comments in favor of granting the area variances. Peter Watson, 15 Cooper Avenue, stated that he had no issue whatsoever with the area variance application, that the two-story structure had thus far been constructed in a good manner, that the structure was not an eyesore, and that he was fully supportive of issuing the requested variances. Mr. Watson later commented that he had

looked at the site through google imaging, and that there appears to be a lot of other structures on both Cooper Avenue and Mt. Pleasant Avenue that are within the 20' rear property setback. Also, Mr. Watson stated that there had been thefts in the neighborhood, and this storage shed would provide a safe place for Mr. Mulinio's tools. Mr. Watson also later commented regarding the height issue, stating that he was concerned that a 12' height limitation within this neighborhood would not allow homeowners to build a garage with a peaked roof and meet the 12' height limit, and that this was limiting the neighborhood from developing and expanding. Kate Cronin, 23 Cooper Avenue, stated that her property was directly adjacent to the Mulinio property, that she fully supported the application and issuance of the area variances, that the Mulinio children were outside playing all day and that this was positive, that Mr. Mulinio had built a good and safe structure, that the structure was aesthetically pleasing to the neighbors, that this would provide an area for storage of Mr. Mulinio's equipment and also provide a playhouse for the children, and that she fully supported the application. Chairman Steinbach asked whether there were any further comments in support of the application. Chairman Steinbach then asked for any comments in opposition to the application. Dolores Ciannamea, 68 Mt. Pleasant Avenue, said that the structure was unsightly, that the structure was massive, that the structure had a negative effect for the residents on Mt. Pleasant Avenue, that the only pictures Mr. Mulinio had given to the Zoning Board were from the front and sides of the structure but that the back of the structure faces Mt. Pleasant and it is unsightly, that the height of the structure had a negative effect for the residents on Mt. Pleasant, that the requested variances were substantial, that the structure would affect the sale value of the homes on Mt. Pleasant, and that she was speaking on behalf of a number of her neighbors on Mt. Pleasant, and concluded by handing up a memorandum and pictures of the rear of the structure taken from Mt. Pleasant Avenue. Member

Trzcinski asked Mrs. Ciannamea as to how many residents she was speaking for, when she stated she was speaking on behalf of a number of the neighbors on Mt. Pleasant Avenue. Mrs. Ciannamea stated she was speaking on her own behalf, on behalf of the Fitzpatricks at 70 Mt. Pleasant Avenue, the Gavins at 74 Mt. Pleasant Avenue, and the Sommos at 60 Mt. Pleasant Avenue. Mr. Mulinio immediately responded that the back side of the structure is only temporary, that it was installed just to make the structure sturdy while he was working on other parts of the structure, and that the temporary back would be removed and the same knotty pine exterior would be added just as he did on the front and two sides of the structure. Mr. Mulinio also stated that he had resided at his home since 2005, and that the Ciannamea lot had very tall trees along the Ciannamea lot line which were cut down about a day after Mr. Mulinio had built the structure on his lot, and that instead of replacing these trees with similar tall trees, the Ciannamea placed only 6' high trees along their property line. Mrs. Ciannamea responded by saying that the trees were over 20 years old, that they were diseased and needed replacement, and that these were not cut down by choice but rather were required to be cut down because of disease. Mark Danskin, registered land surveyor with office at 74 Bellview Road, Brunswick, stated that he had been retained by Mrs. Ciannamea to look at the structure that was built, that in fact it appeared to Mr. Danskin to be a nicely built structure, but that the visual impact of the structure from the Mt. Pleasant side was significant and that the Zoning Board members should look at this structure from the Mt. Pleasant viewpoint, rather than just the Cooper Avenue viewpoint. Bill Fitzpatrick, 70 Mt. Pleasant Avenue, stated that while no one appears to be complaining about the two-story structure from the Cooper Avenue side, this structure does affect the properties on Mt. Pleasant Avenue. Member Trzcinski commented that it appeared the neighbors on the Mt. Pleasant side were concerned only about the height of the structure, and not

concerned regarding the setback from the side yard and rear yard line. Sissy Gavin, 74 Mt. Pleasant Avenue, stated that this structure results in a terrible view from the Ciannamea lot, and that while it may look good from the Cooper Avenue side, this does not look good from the Mt. Pleasant Avenue side because this structure is so tall. Member Hannan also commented that it appeared the issue was the height of the structure, particularly from the Mt. Pleasant Avenue side. Member Hannan wanted to confirm that this new structure replaced an old shed on the Mulinio lot, and wanted to confirm that this was in the same footprint as the prior shed. Mr. Mulinio stated that the new shed was in the same general footprint of the old shed, and may in fact be a foot or two closer to the house and away from the property line. Mr. Hannan asked about the height of the prior shed. Mr. Mulinio said that the old shed was 10' or 12' high, and that the current shed is 18' high. Member Schmidt asked whether this application needed to be decided as a whole, or whether each individual variance which Mr. Mulinio was seeking, including the rear yard setback, side yard setback, and height, should be addressed and decided separately. Attorney Gilchrist stated that the application sought three variances, including the rear yard setback variance, the side yard setback variance, and the height variance, and that each individual variance needed to be analyzed in terms of the factors to be determined on area variance applications. Member Balistreri wanted to confirm that the storage unit in this structure was on the first floor, and that the children's playhouse was on the second floor. Mr. Mulinio confirmed this. Member Trzcinski stated that with respect to the side and rear yard setback requests, it appears Mr. Mulinio has moved the structure closer to his house and further away from the rear yard and side yard property lines where the former shed was located, but that the height issue was clearly a separate issue in that the old shed was 10' or 12' high and the new shed is 18' high. Member Hannan stated that Mr. Mulinio should have come to the Town before

the start of construction, and that this issue has been self-created. Chairman Steinbach asked whether there were any further public comments. Hearing none, Chairman Steinbach entertained a motion by Member Schmidt to close the public hearing, which motion was seconded by Member Hannan. The motion was unanimously approved, and the public hearing on the Mulinio area variance applications closed. Chairman Steinbach inquired about procedure with Attorney Gilchrist. Attorney Gilchrist stated that as the public hearing has been closed, a final determination by the Zoning Board concerning the area variance application needs to be made within 62 days. Chairman Steinbach was of the opinion that the Zoning Board members should do an additional site visit, and view this structure from the Mt. Pleasant side. The Zoning Board members were generally in agreement with that approach. Mrs. Ciannamea said that she consented to have the Zoning Board members access her property to view the shed from the Mt. Pleasant side. Member Schmidt then made a motion to table the Mulinio area variance applications until the September meeting. Member Hannan seconded the motion. The motion was unanimously approved, and the Mulinio area variance applications tabled until the September 15 meeting. Mr. Mulinio stated in closing that the Zoning Board members should keep in mind that the back of the shed structure which faces Mt. Pleasant is only temporary, and that it will be taken down and replaced with knotty pine siding to match the sides and front of the structure. This matter is placed on the September 15 agenda for further discussion.

The next item of business on the agenda was the area variance application submitted by Ray Sign Co. for the installation of a sign for the Dollar Tree store to be located in the Brunswick Plaza at 720 Hoosick Road. Russ Hazen of Ray Sign Co. was present on the application. Chairman Steinbach asked whether there were any changes or additional information concerning the application. Mr. Hazen stated that there were no changes to the

application, that the Dollar Tree was looking to install 42” letters for the exterior Dollar Tree sign where the Town Code allows 36” letters, and that Dollar Tree was seeking to install a 48” round symbol as part of its exterior sign, and Mr. Hazen did state that the owner of the Brunswick Plaza, Robert Pollock, had simply consented that the application was made and was not the applicant. The Zoning Board then opened a public hearing on the application. The notice of public hearing was read into the record, noting that the public notice was published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach then opened the floor for the receipt of public comment. No members of the public wished to provide comment on the application. After allowing adequate time for the receipt of public comment, Member Hannan made a motion to close the public hearing on the application, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing closed. Member Trzcinski inquired whether the Dollar Tree store would also be listed as one of the stores on the Brunswick Plaza sign located adjacent to Route 7. Mr. Hazen stated that the Dollar Tree sign would be on the road sign adjacent to Route 7. Attorney Gilchrist then stated that this area variance was for commercial application, and therefore compliance with the State Environmental Quality Review Act was required. Chairman Steinbach stated that he felt the addition of an exterior sign at the existing Brunswick Plaza would not result in any significant adverse environmental impact, and felt that a negative declaration should be adopted. The Zoning Board members generally concurred, with Member Schmidt stating that the only potential impact could be visual, and he was of the opinion that the requested variance would not result in a significant adverse environmental impact. Chairman Steinbach then made a formal motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Balistreri. The motion was

unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board members then deliberated on the factors to be considered in whether to grant the area variance for this sign. As to whether the requested variance would result in an undesirable change in the character of the area or create a detriment to nearby properties, Member Balistreri was of the opinion that there would not be an undesirable change or detriment to nearby properties because this was already an existing mall with plenty of signage throughout the mall. Member Trzcinski stated that she felt the requested size of the lettering for the sign was too big, and that since the proposed layout of the sign had two rows of letters, the requested variance was not simply 6" but combined for a total of 12" which Member Trzcinski felt was significant. As to whether there was a feasible alternative available to the applicant, Member Trzcinski said the applicant could comply with the 36" letter limit and meet the Town Code and still meet its need for exterior signage. Member Hannan did note that the Dollar Tree sign would be on the sign board along Route 7, and that while the applicant wanted additional visibility for the Dollar Tree sign on the exterior of the building, the visibility was also obtained through the road sign adjacent to Route 7. Member Trzcinski felt there was no difference between a 36" lettered sign and a 42" lettered sign in terms of visibility. As to whether the requested variance was substantial, Chairman Steinbach stated that while the request was to add 6" to the 36" limit, he did feel that the request was substantial since all of the other signs within the mall met the 36" letter limit. Member Schmidt felt that while the variance would be more substantial if the building was closer to Route 7, he did note that this was already inside the mall, which makes the need for larger letters for the signage less necessary. As to whether the requested variance would have an adverse effect on the physical or environmental conditions in the area, the Board members generally concurred that there would not be an adverse effect on the physical or environmental conditions.

As to whether the difficulty is self-created, all the Board members generally concurred that the difficulty was self-created, that the Dollar Tree sign could comply with the size limit as the other tenants in the mall have done, and still be competitive. The Zoning Board members also noted that there was an additional Dollar Tree sign on the road sign adjacent to Route 7. The Zoning Board members then considered all of these factors and balanced the benefit to the applicant if the variance was granted for this sign as weighed against the detriment to the general health, safety and welfare of the community, and determined that the detriment outweighed the benefit to the applicant. The Zoning Board members concluded that the applicant was not denied adequate signage, and felt that a lettered sign of 36” was adequate for this location as opposed to increasing the size to 42”, and were further concerned that allowing the larger sign for the Dollar Tree store would result in requests from other tenants within the mall to increase the size of their signs which the Zoning Board did not support. Member Schmidt asked Mr. Hazen whether the Dollar Tree store had a set size for its exterior signage on all of its stores. Mr. Hazen stated that the Dollar Tree stores did not have a set size for its signs, but simply wanted maximum affect for competition with the adjacent Price Chopper store. Mr. Hazen did confirm that the Dollar Tree sign could be made any size that the Town supported. The Zoning Board members generally concurred that there was not a significant hardship to the Dollar Tree store in light of its ability to have a smaller sign. Member Steinbach stated that while he respected a business entity trying to advance its business interests through competition, the Zoning Board has an obligation to meet the standards the Town has established for size of signs, and that in this case he did not feel it was in the best interest of the Town to vary the sign standard. Member Schmidt stated that the Town had held all of the other businesses in the mall to that standard, and that the same should be applied to the Dollar Tree store. All the Zoning Board members generally concurred with

those opinions. Thereupon, Member Trzcinski made a motion to deny the area variance application for the Dollar Tree store sign on the building exterior at the Brunswick Plaza, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance application for the Dollar Tree sign at the Brunswick Plaza was denied.

The next item of business on the agenda was the application by Ray Sign Co. for an area variance for signage on the existing Wal-Mart store for the Subway tenant. Russ Hazen of Ray Sign Co. was present on the application, and generally stated that the Subway tenant inside the Wal-Mart store was seeking to have an exterior sign on the Wal-Mart building so that people knew there was a Subway store located within the Wal-Mart store. Mr. Hazen did state that the early plans for the renovated Wal-Mart store did show a placeholder location for this sign, but the general contractor for the Wal-Mart store did not obtain the approvals for this sign when Wal-Mart obtained its sign approvals. Mr. Kreiger confirmed that the size of the proposed Subway sign was not at issue, but rather the variance was sought for the total number of signs on the exterior of the Wal-Mart building. Mr. Kreiger confirmed that Wal-Mart did receive approvals for its signage, but those approvals did not include this sign for the Subway tenant. Mr. Kreiger confirmed that the need for the variance was with the total number of signs, because the Wal-Mart signage uses all of the available number of signs under Town Code. Thereupon, the Zoning Board opened the public hearing on the area variance application. The notice of public hearing was read into the record, noting that the public notice was published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach then opened the floor for the receipt of public comment. No members of the public offered any comment. Chairman Steinbach did note that a letter had been received in opposition to the sign variance application from James Murray, 126

McChesney Avenue. After allowing sufficient time for receipt of public comment, Member Hannan made a motion to close the public hearing on the area variance application, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing was closed. Thereupon, Attorney Gilchrist stated that the application sought an area variance for commercial application, and therefore compliance with the State Environmental Quality Review Act was required. Chairman Steinbach stated that for the same reasons discussed on the Dollar Tree sign application, he was of the opinion that this requested variance to add the Subway to the exterior of the Wal-Mart would not result in any significant adverse environmental impact. Member Schmidt concurred, stating that the only impact would be a visual impact, and he felt that given the existence of the mall and the amount of signage in the mall already, this was not a significant impact. Thereupon, Member Schmidt made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Balistreri. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, the Zoning Board members deliberated on the elements for the requested variance for the Subway sign. As to whether the proposed variance would produce an undesirable change in the character of the area or a detriment to nearby properties, Member Balistreri was of the opinion that an undesirable change or detriment would not result since the proposed Subway sign was not that large of a sign and would comply with the size requirements for the Town, and that adding one additional sign to the Wal-Mart building would not be significant. Member Hannan stated that if the signage was allowed for Wal-Mart, then every other tenant within the Wal-Mart store would want additional signage on the exterior of the Wal-Mart building, and that the building would be covered with signs. Member Hannan thought that there were other tenants within the store, including eyewear and other specialties. Mr. Hazen stated that Subway was the

only tenant in the Wal-Mart store, and all other services and products offered were offered only by Wal-Mart. Mr. Hazen also stated that Subway was a tenant in a number of Wal-Marts in upstate New York. Member Balistreri asked whether the Subway stores in other Wal-Mart locations had signage on the outside of the buildings. Mr. Hazen stated to the best of his knowledge, all of the other Subways at other Wal-Mart locations had exterior signage. Mr. Hazen did note that the Subway tenant did not have any signage on the freestanding pole sign at Route 7, and so Subway did not have any exterior signage at all for this location. Member Schmidt asked what size would otherwise be allowed under Town Code for the Subway sign. Mr. Kreiger stated that a formula needed to be applied for total signage area, but that the issue was Wal-Mart having used up all of the area for signs allowable under the Town Code without getting approval for the Subway tenant. As to the element of whether there was a feasible alternative available to the applicant, the Zoning Board members were consistent in determining that there was no other feasible alternative since the Town Code did not allow any additional signage on the exterior of the Wal-Mart store. As to whether the variance request was substantial, Chairman Steinbach noted that if Wal-Mart had asked for the additional area of the signage at the time it obtained its permits for its exterior signage, the additional area for the Subway sign, which is about 30 square feet, would not have been deemed significant, but that it does look significant as a stand-alone application. Member Schmidt stated that when viewed in light of the overall signage of the Wal-Mart store, the requested variance was not substantial. As to whether the variance for the signage would result in an adverse environmental or physical impact, the Zoning Board members generally concurred that it would not. As to whether the difficulty was self-created, the Zoning Board members generally thought that this was not a problem created by the Subway tenant, but was rather created by Wal-Mart as it failed to obtain

the approvals for the signage for the Subway tenancy at the time it obtained its Wal-Mart signage for the exterior of the building. Upon further deliberation, Member Schmidt stated that he was torn on the application, because if Wal-Mart had asked for this additional 30 square feet of signage at the time it obtained approvals for its signs, it would not have been deemed substantial. Mr. Hazen stated that when Subway came to this location and reviewed the initial building plans, Subway thought that it allowed for exterior signage because it was shown on the plans, but that Wal-Mart had not obtained the approval for this particular Subway sign. After further deliberation, Member Hannan thought it would be appropriate to grant the variance to add the Subway sign to the exterior of the Wal-Mart store, but that if Subway closes within the store, the sign would need to be removed. The Zoning Board generally discussed this, with the majority of the members feeling that this was an appropriate determination on this application. Member Hannan then made a motion to grant the area variance application to allow the addition of the Subway sign on the exterior of the Wal-Mart building, subject to the condition that the sign would need to be removed if the Subway store closes, and upon the further condition that if any new tenant were to go into the Subway space, a new variance application would need to be submitted in connection with its specific sign. Member Balistreri seconded the motion subject to the stated conditions. The motion was voted upon, and approved by a 4/1 vote, Member Trzcinski opposed.

The next item of business on the agenda was the area variance application submitted by Land Lease, Inc. on behalf of BK Troy Holdings, LLC for the installation of new signage at the existing Burger King restaurant located at 747 Hoosick Road. Mike Desimone of Land Lease was present for the applicant. Chairman Steinbach asked if there were any changes or additions to the application. Mr. Desimone stated there were no changes or additions, and the application

presented the current standard branding package for Burger King restaurants. 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 notice had been published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach then opened the floor for the receipt of public comment. There were no public comments submitted. After adequate time for receipt of public comment, Member Schmidt made a motion to close the public hearing on the area variance application, which motion was seconded by Member Hannan. The motion was unanimously approved, and the public hearing closed. Attorney Gilchrist stated that this area variance was sought for commercial application, and therefore compliance with the State Environmental Quality Review Act was required. Chairman Steinbach stated that in his opinion, replacing existing signage with new signage at the Burger King restaurant would not result in any significant adverse environmental impact. Member Schmidt concurred, stating that the only potential impact would be visual impact, and given this location, did not deem that impact to be significant. Member Hannan then made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Balistreri. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board then deliberated on the elements for area variances. Mr. Kreiger confirmed that this application sought a variance for the total number of signs allowed, and that the total square footage of the signs was not an issue. Mr. Kreiger stated that the only issue for the Zoning Board to determine was whether the total number of signs would be allowed. Mr. Desimone reviewed the number of signs, stating that the applicant sought a total of 3 “button signs”, totaling 5’ in diameter, showing the “BK” logo. Mr. Desimone stated that the “button signs” were the most important of the signs from the owner’s perspective, and was a

standard branding sign for Burger King. Mr. Desimone stated that the applicant was seeking approval for the “button sign” on each side of the building plus the front of the building. Mr. Desimone also stated that there were two additional signs, one stating “taste is king” in an area of approximately 4’ x 10’, and a second sign stating “home of the whopper”. Mr. Kreiger stated that the applicant sought approval for five building signs, plus the existing freestanding sign, for a total of 6 signs for this location, where the Town Code allowed a total of 2 signs. The Zoning Board members generally concurred that given the location of this restaurant, and the existence of signs along this area of Hoosick Road, this did not result in an undesirable change in the character of the area or create a detriment to nearby properties. On the element as to whether the requested variance is substantial, the Zoning Board members confirmed that Town Code allowed a total number of two signs whereas a total of 6 are being requested, and the Zoning Board members did feel that was substantial but must be viewed in context with the other factors to be considered. Mr. Desimone then entertained discussion with the Zoning Board members as to whether any of the requested signage could be eliminated. Mr. Desimone stated that the “taste is king” sign could be eliminated, and that one of the “button” signs could likewise be eliminated. Mr. Desimone confirmed that the applicant will eliminate the one “button” sign located on the western side of the building near the drive-thru and located next to the adjacent dental office, and also remove the “taste is king” sign above the main entrance. Considering these revisions, the Zoning Board members discussed whether the application creates an adverse effect on the physical environmental conditions in the area, and whether the difficulty was self-created. The Board determined that the variance did not create a significant adverse environmental or physical impact to the surrounding property, and while the difficulty was in some respects self-created, it is acknowledged that the franchisee is following current franchise requirements for signage.

Members Schmidt and Balistreri also said they were comfortable with the signs as now proposed because the total square footage of the signs was significantly under the Town Code allowance, and that the variance was simply with the total number of signs, which has now been reduced to a total of 4 signs. Member Balistreri made a motion to approve the area variance application as amended, eliminating the requested “button” sign on the western elevation near the drive-thru window, and also removing the “taste is king” sign above the main entrance. Member Hannan seconded the motion subject to the stated conditions. The motion was approved by a 4/1 vote, Member Trzcinski in opposition. This approval allows the “button” signs to be installed on the south and east elevations, the “home of the whopper” sign, as well as the existing freestanding sign.

Two items of new business were discussed.

The first item of new business discussed was an application submitted by American Housing Foundation for a three-story, 86-unit age-restricted apartment building to be located at 112 McChesney Avenue. Linda Stancliffe, of Creighton Manning, was present for the applicant. Ms. Stancliffe generally presented the proposal, which seeks approval for construction of the three-story, 86-unit senior only (55 years and up) apartment building on a vacant parcel located at 112 McChesney Avenue. The parcel is currently zoned R-25, and the application seeks a special use permit for multi-family housing. Ms. Stancliffe stated that there was both public sewer and public water available at the site. Ms. Stancliffe explained that about 75% of the proposed apartment units are one-bedroom, with about 25% being two-bedroom units, with a community room on the first floor and available storage for tenants. Attorney Gilchrist noted that a Short Environmental Assessment Form has been submitted with the application, and that the applicant should prepare a Full Environmental Assessment Form. In addition, Attorney

Gilchrist stated that he would need to research the issue of whether this type of multi-family housing has been reviewed as a special permit use under the Brunswick Zoning Code, and further research on that issue is required. Attorney Gilchrist further noted that the application also lists site plan review by the Planning Board as needed, and that in the event this project moves forward through the special use permit and site plan process, coordination between the Zoning Board of Appeals and the Planning Board will be required. Ms. Stancliffe stated that she was planning to present the site plan to the Planning Board at its August 21 meeting. The Zoning Board stated it will place this matter on its September 15 agenda for further discussion.

The second item of new business discussed was the area variance application submitted by Keith Duncan for property located at 51 Norfolk Street. Mark Danskin, registered land surveyor, was present for the applicant. Mr. Danskin explained that the parcel on which a home sits with address 51 Norfolk Street, generally located at the intersection of Norfolk Street, Otsego Avenue, and Duncan Lane, is seeking to be subdivided so that it can be sold to an existing tenant residing at 51 Norfolk Street. Mr. Danskin generally explained the background of the Duncan parcels, and that there currently exists two residential structures on one parcel, and the current application sought to subdivide that parcel to create 51 Norfolk Street with one residence on one residential lot, but in doing so given the particular size and configuration of this lot with respect to public roadways, a series of variances are required in terms of building setbacks and total lot size. Mr. Danskin confirmed that no new structures are being proposed, but to rather divide the existing residences on separate lots, which results in the lot for 51 Norfolk Street being substandard in size and does create structure setback issues. It is noted that the home located at 51 Norfolk Street currently has a setback issue with respect to the road right-of-way. This matter

will also be subject to subdivision review by the Planning Board. This matter has been placed on the September 15 agenda for further discussion.

The index for the August 18, 2014 meeting is as follows:

1. Mulinio – area variance – 9/15/14.
2. Ray Sign Co. – Dollar Tree sign variance – denied.
3. Ray Sign Co. – area variance for Subway sign at Wal-Mart building – granted with conditions.
4. Land Lease, Inc. – area variance for Burger King signage – granted with conditions.
5. American Housing Foundation – special use permit – 9/15/14.
6. Duncan – area variance – 9/15/14.

The proposed agenda for the September 15, 2014 meeting currently is as follows:

1. Mulinio – area variance.
2. American Housing Foundation – special use permit.
3. Duncan – area variance.

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD September 15, 2014

PRESENT were JAMES HANNAN, E. JOHN SCHMIDT, MARK BALISTRERI and CAROLINE TRZCINSKI.

ABSENT was MARTIN STEINBACH, CHAIRMAN.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

Member Balistreri served as Chair for this meeting in the absence of Chairman Steinbach.

The Zoning Board members reviewed the draft minutes of the August 18, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Schmidt, the draft minutes of the August 18, 2014 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by John Mulinio for property located at 21 Cooper Avenue. John Mulinio was present on the application. The Zoning Board members confirmed that the public hearing on the application for area variance was held on August 18, 2014, and that the public hearing was closed on that date. The Zoning Board members began their deliberations on this application at the August 18, 2014 meeting, but the Zoning Board members also wanted the opportunity to do an additional review of the property prior to making any final determination. The Zoning Board members having had the opportunity to further review the property, the Board was prepared to further deliberate on the application at this meeting. The Zoning Board members stated that lot line variances and a height variance are being requested. The Zoning Board inquired whether the application needed to be treated as a whole, or whether the individual variance requests should be addressed

separately by the Zoning Board. Attorney Gilchrist stated that the Zoning Board had the jurisdiction to address each of the requested variances, based upon the proof submitted for each variance as well as the public comments received. The Zoning Board determined that the lot line variances, which include both a side yard variance and rear yard variance, should be treated together, and that the requested height variance should be treated separately. The Zoning Board members then reviewed the elements which are considered in connection with balancing the benefit to the Applicant as compared to the detriment to the surrounding community regarding each requested variance. As to whether the proposed variances will produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Trzcinski felt that the side yard setback and rear yard setback variances would not create a detriment or undesirable change, particularly since a shed had been located in that spot on the property for several years, and that the Applicant had actually moved the shed structure further into the lot to increase the separation from the lot lines. The other Zoning Board members concurred with that opinion. Concerning the requested height variance, Member Schmidt stated that his opinion is the height will create a detriment to nearby property in terms of visual impact, since this proposed structure is 18' whereas the prior shed was only 10' to 12' in height. Member Schmidt also stated that based on his inspection of the property in the surrounding neighborhood, there were no other accessory structures in the neighborhood at the requested 18' in height. Member Schmidt felt that this increased height will create a visual detriment to the surrounding neighborhood and property owners. The remaining Zoning Board members agreed with that opinion. The Zoning Board members then addressed whether the benefit sought by the Applicant could be achieved by some other feasible method, other than the requested variances. As to the side yard and rear yard setback variances, the Zoning Board members generally

concluded that there was not an alternate area for the shed structure on the lot given the existence of a pool in the backyard, and also considered the fact that a shed had been in that general location on this lot for years to be relevant. Concerning the requested height variance, Member Trzcinski stated that there was an alternative available, which was to remove the second floor of this structure and still have a shed for the storage of equipment. Member Trzcinski stated that the use of the proposed second floor as a playhouse could be achieved by building a smaller playhouse somewhere else on the property. The Applicant stated from the audience that if he had to build the playhouse somewhere else on the lot, there would be no back yard area left between the pool, the shed, and the playhouse. As to whether the requested variances are substantial, Member Trzcinski stated that the side yard and rear yard variances were acceptable, but that she feels the requested height variance is substantial. Member Balistreri stated that he felt both the rear yard and side yard setback requests were substantial, but did note that a shed structure had been in that general location for years on this lot. Member Balistreri concurred that the requested height variance is substantial, with a requested 50% increase in the code limit of 12', requesting a total height of 18' being substantial. Member Balistreri also felt it was relevant that the shed structure which had been previously located on this lot was only 10' to 12' in height, and compliant with the Town Code height limits. The remaining Zoning Board members generally concurred with those statements. As to whether the proposed variances would have an adverse effect on the physical or environmental conditions in the neighborhood, the Zoning Board members generally concurred that as to the rear yard and side yard setbacks, there would be no adverse effect on the physical or environmental conditions, but with respect to the height variance, a visual impact is produced. As to whether the difficulty requiring the variances is self-created, Member Trzcinski stated that the rear yard and side yard variance requests may be

viewed as self-created, but felt it was relevant that a shed structure had been located in that general location on the lot for several years. As to the height variance, Member Trzcinski was of the opinion that the height variance was entirely self-created, as the former shed structure was only 10' to 12' in height and compliant with Town Code height requirements. The remaining Zoning Board members concurred with those statements. The Zoning Board members then proceeded to make a determination on the rear yard and side yard setback variance and the height variance requests. Based on the deliberations of the Zoning Board members, Member Trzcinski made a motion to grant the requested side yard and rear yard setback variances, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the side yard and rear yard setback variances were granted. Based on the deliberations of the Zoning Board members, Member Hannan then made a motion to deny the height variance request, as the variance will create an undesirable change to the character of the neighborhood, create a detriment to nearby properties in terms of visual impact, that the requested variance is substantial, and that the requested variance was entirely self-created. Member Balistreri asked Mr. Kreiger about the method the Building Department uses to determine total height of a structure. Mr. Kreiger explained the height determination when a pitched roof is proposed, but that in this case, a flat roof is being proposed, so that the highest point of the roof must be used to determine total height, and that in this case the total height is 18'. Member Trzcinski seconded the motion to deny the area variance for height. The motion was unanimously approved, and the application for a height variance in this matter was denied. The Zoning Board members directed the Applicant to coordinate with the Building Department concerning the implementation of this determination.

The next item of business on the agenda was the application submitted by American Housing Foundation for a three-story, 86-unit age-restricted apartment building proposed for 112 McChesney Avenue. Mr. Kreiger reports that the Applicant has requested this matter be adjourned without date.

The next item of business on the agenda was an area variance application submitted by Keith Duncan for property located at 51 Norfolk Street. Mr. Kreiger reports that the Applicant has requested this matter be adjourned without date, pending a complete application signed by all record owners of the property.

Three items of new business were discussed.

The first item of new business discussed was a sign variance application submitted by Callahan Sign, LLC on behalf of Carbone Auto Group for property located at 800 Hoosick Road. James Callahan was present for the Applicant. Mr. Callahan explained that Carbone Auto Group is seeking to install 6 signs in connection with the new Carbone Subaru dealership at 800 Hoosick Road, including one pylon sign and five wall signs. Mr. Callahan also stated that the Applicant was seeking approval to install a 53" Subaru logo on the building, where Town Code allows only a 36" sign. Mr. Kreiger confirmed that the total square footage of all 6 proposed signs are under the 300 square feet total allowed pursuant to Town Code, and that the variances sought were for the total number of signs and for the size of the Subaru logo. Mr. Kreiger stated that Town Code allows a total of 2 signs for the facility, whereas a total of 6 signs are being proposed. Mr. Kreiger also stated that Town Code allowed a maximum 36" sign, whereas a proposed 53" Subaru logo is being proposed for the building. The Zoning Board members reviewed the application materials, and determined them to be complete. This matter has been scheduled for a public hearing to commence at 6:00 p.m. on October 20, 2014.

The next item of new business discussed was a use variance application by Christine Lozo for property located at 19 Chester Court. The Applicant is proposing to operate a “doggie daycare” and boarding facilities for dogs at this residential location. The Zoning Board members reviewed the general schematic layout included in the application. The Zoning Board members asked the total number of dogs which would be at this location during the day as part of the “doggie daycare”, and how many dogs would be allowed to board overnight at this location. The Applicant stated that up to 20 dogs would be present at this site during the day, and that the facility would be able to board up to 6 dogs at night. The Applicant also stated that the hours of operation for the “doggie daycare” was 7:00 a.m. to 6:00 p.m., Monday through Friday only. The Applicant also stated that she intended to build another building on the lot for this business. Member Hannan asked whether the Applicant had any experience with handling dogs. The Applicant stated that she had experience working at Hudson Mohawk Humane Society, with dog rescue teams, and working with several dog trainers in the area. Attorney Gilchrist noted that the application seeks a use variance, and that upon review of the application materials, no information has been submitted to the Board in terms of economic proof, and specifically on the issue of whether the Applicant is able to obtain a reasonable economic return on this property for the uses allowed in this Zoning District pursuant to the Brunswick Zoning Code. Attorney Gilchrist advised the Board that this economic proof was required, as one of the elements the Board needs to determine is whether the Applicant can realize a reasonable return from the property without the proposed use variance, as demonstrated by competent financial evidence. The Zoning Board members concurred that given this lack of evidence, the application is not complete. The Zoning Board requested that this evidence be submitted by the Applicant, and adjourned this matter until such financial information is submitted to the Zoning Board.

The third item of new business discussed was a special use permit application submitted by Tom Walsh for property located at 513 Farm-to-Market Road. Member Schmidt stated that he is recusing himself from considering this application due to the fact that he is the owner of adjacent property. Member Schmidt then left the Board table. Mr. Walsh was present on the application. Mr. Walsh explained that he is the owner of the property, and that it is currently a two-family structure, and that he is requesting approval to add a third unit so that this will become a three-family structure. Mr. Walsh stated that each of the proposed units would have separate entrances available, and that the septic system on the lot was adequate for three units. Mr. Walsh explained that when he purchased this property, it was a two-family structure, but that he had used the structure as a one-family residence while his children were younger, and then converted the property back to a two-family structure and created an in-law apartment, which is not being used for family purposes anymore but is rather being rented out, and he is now seeking approval to add a third unit to the structure. Mr. Walsh stated that there would be no external structural changes, but that the only renovations would be internal. The Zoning Board members reviewed the application materials, and deemed them complete. This matter has been scheduled for public hearing to commence at 6:15 p.m. on October 20, 2014.

The index for the September 15, 2014 Zoning Board of Appeals meeting is as follows:

1. Mulinio – area variance:
 - a. Side yard setback variance: granted.
 - b. Rear yard setback variance: granted.
 - c. Height variance: denied.
2. American Housing Foundation – special use permit – adjourned without date.
3. Duncan – area variance – adjourned without date.
4. Callahan Sign, LLC – sign variance – 10/20/14 (public hearing to commence at 6:00 p.m.).

5. Lozo – use variance – adjourned without date pending submission of additional information.
6. Walsh – special use permit – 10/20/14 (public hearing to commence at 6:15 p.m.).

The proposed agenda for the October 20, 2014 meeting currently is as follows:

1. Callahan Sign, LLC – sign variance (public hearing to commence at 6:00 p.m.).
2. Walsh – special use permit (public hearing to commence at 6:15 p.m.).

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD October 20, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN, E. JOHN SCHMIDT, MARK BALISTRERI and CAROLINE TRZCINSKI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The Zoning Board members reviewed the draft minutes of the September 15, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the draft minutes of the September 15, 2014 meeting were unanimously approved without amendment.

The Zoning Board of Appeals opened a public hearing on an area variance application submitted by Callahan Sign, LLC on behalf of Carbone Auto Group for property located at 800 Hoosick Road. The notice of public hearing was read into the record, with the notice being published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach requested that the applicant make a short presentation concerning the application. James Callahan, of Callahan Sign, LLC was present, and stated that the application sought an area variance for signs to be installed at the new Carbone Subaru located at 800 Hoosick Road. Mr. Callahan stated that the total square footage of all signs combined was within Town Code requirements, but that he was requesting the installation of a total of six signs, where the Town Code allowed a total of two signs. Mr. Callahan stated that five of the signs would be attached to the building, including the Subaru logo, and one sign would be a freestanding pylon sign in the front of the property. Mr. Callahan also stated that the proposed Subaru logo was larger than allowed by the Town Code, and was

requesting a variance for the size of the Subaru logo. Chairman Steinbach then opened the floor for receipt of public comment. No members of the public wished to comment on the application. Member Hannan stated that while the Subaru logo was larger in its size than allowed by Town Code, he felt that this was offset by the fact that the building was set back far off Hoosick Road. Member Trzcinski stated the Subaru logo was distinctive, and did not need to be larger in size. Chairman Steinbach stated that the Town limit for the size of signs is 36 inches and the proposed Subaru logo sign is 53 inches in diameter. Member Hannan asked the applicant as to the distance from the Hoosick Road corridor to the location of the building. Mr. Callahan stated that it was approximately 250 feet. Member Trzcinski stated that she did not have a problem with the total number of signs, because each of the signs was for a different purpose in connection with the auto dealership, but that she did have a problem with the size of the Subaru logo sign. Chairman Steinbach inquired about the size of the Subaru logo sign. Mr. Callahan stated that the Subaru logo sign was a branding sign that Subaru required for its dealerships, and that the specific size of the sign was mandated by Subaru given that the other sign lettering is 36 inches. A representative of Carbone Auto Group stated that the size of the lettering and the size of the Subaru logo dictated the size of the tower, including the chimney, that was already built for the dealership building, and that a smaller sign would look out of place. The Board members then reviewed the specific signs and the rendering of the building showing the sign locations. Chairman Steinbach inquired whether any Board members had any additional questions for the applicant. Hearing none, Member Hannan made a motion to close the public hearing, which motion was seconded by Member Schmidt. The motion was unanimously approved and a public hearing closed on the area variance application by Callahan Sign, LLC. The Zoning Board then proceeded to deliberate on the application. Chairman Steinbach stated that the Board first

needed to consider a determination of environmental significance under SEQRA. The Board members generally discussed that this was the redevelopment of an existing commercial site, and determined that the project would not result in any significant adverse environmental impact. Member Schmidt made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Balistreri. The motion was unanimously approved, and a SEQRA negative declaration adopted. In its deliberations on the application, the Zoning Board determined that the variance for the proposed signs would not result in an undesirable change in the character of the neighborhood, nor create a detriment to nearby properties, as the site was an existing commercial site that was redeveloped, and that the general area was commercial in nature. The Zoning Board members also determined that a feasible alternative was not available to the applicant, since this was the redevelopment of an existing structure, located approximately 250 feet off Hoosick Road. Member Balistreri also stated that the dealership did have a Subaru logo pursuant to the dealership agreement, and also needed additional direction signs to direct customers to the appropriate location at the dealership. Member Schmidt also stated that given the location of the building, the signs need to be allowed for visibility. As to whether the requested variance is substantial, Member Hannan felt that it was not substantial, whereas Chairman Steinbach stated that the size of the Subaru logo variance is substantial, but is mitigated by the fact of the distance of the building from the Hoosick Road corridor. The Zoning Board members concluded that the area variances would not result in an adverse effect on the physical or environmental conditions in the neighborhood, noting that the Zoning Board had adopted a negative SEQRA declaration, and also that environmental concerns had been addressed by the Planning Board during a site plan review for this project. The Zoning Board members also felt that in this case the difficulty was not self-created, since this was the

redevelopment of an existing building which had been in previous commercial use and that the nature of the automobile dealership business did require a number of signs for directional purposes for customers. Chairman Steinbach inquired as to whether there were any further comments or questions on the application. Hearing none, Member Balistreri made a motion to grant the area variance application for the sign installations, which motion was seconded by Member Hannan. The motion was approved upon a 4-1 vote, with Member Trzcinski opposed.

The Zoning Board next opened a public hearing on the special use permit application submitted by Tom Walsh for property located at 513 Farm-to-Market Road. Member Schmidt stated he is recusing himself from consideration of this application, as he is an adjacent property owner. The notice of public hearing was read into the record, with that notice having been published in the Troy Record, placed on the Town sign board, posted on the Town website and mailed to owners of all adjacent properties. Chairman Steinbach requested that the applicant present the application. Tom Walsh was present, and stated that the application sought approval for converting the residence located at 513 Farm-to-Market Road to a three-family structure. Mr. Walsh explained that when he purchased the property, the building had been a two-family structure, but that with the size of his family it had been converted back to a single family residence, and had thereafter been put back into two-family use with the addition of an in-law apartment, and now a third unit to be used as an additional apartment was being proposed. Mr. Walsh did state that the third apartment was already in use, and that he had mistakenly believed that the property already allowed for multi-family use given the two-family historical use, and that he is now requesting a special use permit for the addition of the third apartment. Chairman Steinbach then opened the floor for the receipt of public comment. Rod Owens, owner of Pine Creek Farm, LLC, stated that his property was adjacent to Mr. Walsh's, that he had no

opposition whatsoever to the issuance of the special use permit, that he wanted to confirm that the previous use of the property was for multi-units, that Mr. Walsh has been a good neighbor and that there have not been any problems whatsoever for over thirty years. Chairman Steinbach asked if there were any questions or comments from members of the Zoning Board. The members of the Zoning Board had no questions for the applicant. Chairman Steinbach asked if all three units at the structure were currently occupied. Mr. Walsh stated that they are occupied, and that the third apartment unit had been occupied for about two years. Mr. Walsh explained that he was selling the property to his grandson, and wanted to have the zoning compliance issue addressed prior to that sale. Member Trzcinski asked whether the grandson will be living at the property. Mr. Walsh's grandson was present, and stated that he would be living at the property, and that in the future the property may go back to a two-family unit, but the property will be maintained as a three unit building currently. Chairman Steinbach again inquired if there were any further questions or comments for the applicant. Hearing none, Member Hannan made a motion to close the public hearing, which motion was seconded by Member Balistreri. The motion was approved 4-0, and the public hearing closed. The Zoning Board then proceeded to deliberate on the application. The Zoning Board determined that the project did not have the potential for any significant adverse environmental impacts. Member Balistreri made a motion to adopt a negative declaration pursuant to SEQRA, which motion was seconded by Member Hannan. The motion was approved 4-0, and a SEQRA negative declaration was adopted. The Zoning Board then deliberated on the application, determining that the proposed use of the property as a three-family unit was appropriately located with respect to transportation facilities, water supply, fire and police protection, and waste disposal; that the property had adequate parking for the use of the property as a three-family structure; that the use of the structure as a

three-family unit did not negatively impact neighborhood character, noting that the adjacent property owner had fully supported the application; that the use of the property as a three-family structure would not cause undue traffic congestion or create a traffic hazard; and that the use of the property as a three-family structure would not cause any significant impairment of public health or general interest or welfare of the Town. The Zoning Board members did state that the special use permit would allow the property to be used for multi-family purposes, but stated that an appropriate condition to any action on this application would limit the total number of units at this location to three units. Member Hannan then made a motion to approve the special use permit on the condition that the number of units at this property is limited to a total of three units. Member Balistreri seconded the motion subject to the stated condition. The motion was approved 4-0, and a special use permit granted subject to the stated condition.

Two items of new business were discussed.

The first item of new business discussed was an area variance application submitted by David Kent for property located on Banker Avenue (tax map #71.17-2-1). The property is located in the R-15 residential zoning district. The property is currently vacant. The applicant was represented by John Dowd, Esq., who was present at the meeting. Mr. Dowd explained that Mr. Kent seeks to construct a single family residence on this lot, but requires the variance in order to construct a driveway over a paper street to connect to the existing public roadway of Banker Avenue. Mr. Dowd explained that the original developer of this area had laid out a paper street which would have brought the street directly in front of the Kent lot, but that the developer never finished the road, it shows merely as a paper street on the filed map. Mr. Kent seeks to develop the property for single family use, and seeks a variance to allow the construction of a driveway over the paper street to connect to Banker Avenue. The Zoning Board reviewed aerial

photographs with Mr. Dowd, and Mr. Dowd stated that he would provide the deeds to the Kent property to Attorney Gilchrist. Mr. Kreiger generally reviewed with the Board members the area of Banker Avenue that is being maintained by the Town of Brunswick, and coordination with the Highway Department will be required to determine the current area of maintenance of Banker Avenue. Mr. Dowd will be providing the Kent deeds to Attorney Gilchrist to address the issue of ownership of the paper street as depicted on the filed map. The Zoning Board members concurred that there was adequate information submitted on the application for purposes of opening the public hearing on this application. The Zoning Board scheduled a public hearing for this application for its November 17, 2014 meeting to commence at 6:00 pm.

The second item of new business discussed was an area variance application submitted by Christian McGrath and Leo McGrath concerning property located at 205 Bulson Road (Tax map #93.-2-2). The property is located in the R-40 residential zoning district. The applicants were present, together with their attorney Kenneth Bruno, Esq. Mr. Bruno presented the application, stating that the Zoning Board had denied an initial area variance application for this property in February 2014. Mr. Bruno then stated that the applicants had reconfigured the proposed addition to the existing residential structure and is now seeking a substantially reduced area variance in this matter. Mr. Bruno confirmed that the side yard setback requirement for this location is 25 feet. Previously, the applicant had sought a variance of 20 feet, which would have allowed the residential addition to be located five feet from the side yard line. After that application had been denied, the applicants had redesigned the addition to this home and are now seeking a variance of 10 feet, which would allow the addition to the home to be located 15 feet from the side yard line. Mr. Bruno stated that this proposal reduced the size of the addition to the home by one-half, and that there was no feasible alternative to the location for this addition

since there was a driveway and well located on the other side of the home on this lot. Mr. Bruno stated that the variance application was significantly reduced, was not substantial in nature, provided additional buffer to the adjacent property owner, and that no environmental impact would result from this proposal. Mr. Bruno did state that the current situation is self-created, but that the applicant is trying to address both the neighbor concerns and concerns of the Zoning Board by significantly reducing the size of the addition and significantly amending the variance application request. The Zoning Board members reviewed the application materials, which include the application form, site map showing the location of the structures on the lot, and floor plans for the redesigned addition to the home. The Zoning Board members determined that these materials were complete for purposes of opening the public hearing on this application. The Zoning Board set the public hearing on this application for its November 17, 2014 meeting, to commence at 6:15 pm.

The index for the October 20, 2014 meeting is as follows:

1. Callahan Sign, LLC - area variance for signs – granted.
2. Walsh - special use permit – granted with condition.
3. Kent – area variance – 11/17/2014 (public hearing to commence at 6:00 pm).
4. McGrath – area variance – 11/17/2014 (public hearing to commence at 6:15 pm).

The proposed agenda for the November 17, 2014 meeting currently is a follows:

1. Kent – area variance – (public hearing to commence at 6:00 pm).
2. McGrath – area variance – (public hearing to commence at 6:15 pm).

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD November 17, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN, E. JOHN SCHMIDT and CAROLINE TRZCINSKI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

Chairman Steinbach noted for the record that Member Balistreri has been appointed as a member of the Town of Brunswick Town Board, and will no longer be serving as a member of the Brunswick Zoning Board of Appeals. The members of the Zoning Board of Appeals thanked Mr. Balistreri for his service as a member of the Zoning Board of Appeals, and wished him well in his new position as a member of the Brunswick Town Board. Attorney Gilchrist advised the Board that until such time as the Brunswick Town Board appoints someone to fill the fifth membership position on the Zoning Board of Appeals, the Board will act as a four member board, which presents the potential issue of a split vote, or a 2-2 vote on any given application. Attorney Gilchrist further advised the Zoning Board that a vote of the majority of the Board membership is still required in order to approve any application or, in other words, a vote of three members in favor must still be achieved in order to approve any application, even though there are only currently four members sitting on the board. Chairman Steinbach noted these issues.

The Zoning Board members reviewed the draft minutes of the October 20, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the draft minutes of the October 20, 2014 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by David Kent for property located on Banker Avenue (Tax Map No. 71.17-2-1). The Zoning Board opened a public hearing on this application. The notice of public hearing was read into the record, noting that the notice had been published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. John Dowd, Esq. was present for the applicant. Chairman Steinbach requested that Mr. Dowd review the application. Mr. Dowd stated that the applicant was seeking a variance to allow the construction of a driveway over the paper street identified as Banker Avenue on the filed subdivision map creating the Kent lot, but which area had not been improved by a public roadway. Mr. Dowd stated that absent the variance, the Kent lot is essentially a landlocked parcel not capable of being developed. Chairman Steinbach then opened the floor for receipt of public comment. Steve Mullinio, 29 Banker Avenue, stated that he was not necessarily against the variance, but had serious questions concerning it. Mr. Mullinio stated that he owned all the property on the west side of the Banker Avenue “paper street” and is now essentially all woods; that Mr. Kent had previously started to clear trees about two years ago in the area of the paper street, but had also extended tree clearing onto Mr. Mullinio’s property, and had also started to take down a chain link fence that was on Mr. Mullinio’s property, and that Mr. Mullinio had stopped that construction; Mr. Mullinio asked how Mr. Kent would get from his lot to the portion of Banker Avenue that is currently improved and paved, and that he was opposed to having Kent go over any part of his private property; Mr. Mullinio generally asked how Mr. Kent was going to get from his parcel out to the improved Banker Avenue, as Mr. Mullinio owned all the property to the west of the Banker Avenue paper street, Mr. DelSignore owned all the property to the north of the Kent lot, and a new owner, DiNova, owned all property to the south of the Kent

lot; Mr. Mullinio also questions why Kent could not access Bleakely Avenue from his lot. Member Trzcinski questioned how the driveway leading from the DiNova lot over the Banker Avenue paper street leading to the improved, paved Banker Avenue was constructed. Mr. Mullinio stated that he was not clear on that issue, but that the DiNova circular driveway had been there for years. Jim Saunders, 19 Banker Avenue, stated that he built his house in 1968 and moved into that house in 1969, and that the circular driveway now owned by DiNova leading to the improved Banker Avenue had been there in 1969. Mr. Dowd responded to the question regarding accessing the Kent lot to Bleakely Avenue, stating that while the Kent lot had a twenty foot strip leading to Bleakely Avenue, given the length of the driveway which would need to be constructed from Bleakely Avenue to any home constructed on the Kent lot, Town Code required that driveway to be thirty feet wide, but Kent only owned a twenty foot wide strip connecting to Bleakely Avenue. Mr. Dowd stated that Kent was trying to minimize the extent of any variance, in that the variance for a driveway width leading to Bleakely Avenue would be greater than the variance requested to connect the Kent lot to the improved Banker Avenue. Mr. Dowd characterized the paper street as a right-of-way. Attorney Gilchrist questioned the characterization of the paper street as a right-of-way, and requested that Mr. Kreiger confirm whether Banker Avenue was deeded to the Town of Brunswick, and if so, whether the entire length of Banker Avenue was included in that deed. The Zoning Board also questioned whether two new owners of property on Banker Avenue, located at 26 Banker Avenue and 28 Banker Avenue, had been mailed notice of the public hearing. Mr. Kreiger stated that after the initial mailing of the notice of public hearing, he was notified that two new owners located at 26 Banker Avenue and 28 Banker Avenue had not been identified correctly on the service list, but that a subsequent mailing to those individuals had occurred. The Zoning Board requested that

the mailing to new owners at 26 Banker Avenue and 28 Banker Avenue be confirmed. Member Trzcinski also questioned how Kent would access the improved Banker Avenue without going over lands of DiNova or lands of Mullinio. In light of the outstanding questions concerning notice of the public hearing as well as fee title ownership to the entire length of the Banker Avenue paper street, Chairman Steinbach stated that the Zoning Board would keep the public hearing open and continue the public hearing at its December 15 meeting. The Zoning Board members concurred. The public hearing on the Kent variance application is held open and adjourned until the December 15, 2014 meeting.

The next item of business on the agenda was an area variance application submitted by Christian McGrath for property located at 205 Bulson Road (Tax Map No. 93.-2-2). The Zoning Board opened a public hearing on this application. The notice of public hearing was read into the record, noting that such notice had been published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. The applicant was represented by Ken Bruno, Esq. Chairman Steinbach requested Mr. Bruno to make a brief presentation regarding the application. Mr. Bruno confirmed the submission of the application documents, generally stating that the applicant is seeking a side yard variance of 10 feet. Mr. Bruno stated that the addition to this residence will be reduced to a total of a 10 foot addition, resulting in a setback from the exterior of the addition to the side yard of 15 feet, whereas Town Code requires a side yard setback of 25 feet, resulting in a requested variance of 10 feet. Mr. Bruno also handed up a letter from John Kazunas, owner at 7 Windfield Lane, generally supporting the application and supporting the approval of the area variance. Mr. Bruno stated that Mr. Kazunas was not available to attend the meeting, and wanted to hand up the letter in his absence. Chairman Steinbach received the letter and provided copies to each Zoning

Board member. Chairman Steinbach then opened the floor for receipt of public comment, noting that the Kazunas letter generally supporting the application has been made part of the record. Mark Cipperly, 210 Bulson Road, said he was the owner of the adjacent property to the north, and stated that his comments would be similar to his comments concerning Mr. McGrath's previous variance request seeking a twenty foot variance which was previously denied by the Zoning Board. Mr. Cipperly stated that he was in opposition to the variance, stating that the variance is substantial, being a 40% variance from Town Code requirements; that the need for the variance was self-created, as the addition has already been built without compliance with the Town Code requirements; that Mr. McGrath had other feasible options available, including construction to the rear and other side of the lot; that this would result in a negative impact to the surrounding neighborhood; that the building is just too close to the property line; and Mr. McGrath has already removed trees which would have created a visual buffer; and that Mr. Cipperly did not plant corn on his property next to this constructed addition to the McGrath house because the addition is just too close to the property line; that the value of his land to the north has been diminished; that he is very concerned that the applicant has been allowed to again apply for a variance when his previous request had been denied and does not feel that this is fair, and is not the way that business should be done. Chairman Steinbach asked Mr. Cipperly about the removal of the trees. Mr. Cipperly stated that trees were removed due to the construction of the addition to the McGrath house. Frank Brennanstuhl, 27 Dusenberry Lane, asked why the applicant is in front of the Zoning Board again when his prior variance request was denied several months ago, and further asked why the addition is still there and had not been removed; Mr. Brennanstuhl also questioned whether the addition to the McGrath house would really end up being 15 feet from the property line, acknowledging that he did not know where the exact

boundary line was located; that Mr. McGrath had built this addition to the house without a building permit and without any Building Department inspections, and that if Mr. McGrath's contractor was at fault, Mr. McGrath should sue his contractor; that if this structure was a temporary shed, then maybe having it within 15 feet of the side yard property line would be acceptable, but a permanent addition to the house within 15 feet of the side yard boundary line should not be allowed; that if the adjacent property owner to this proposed addition was not agreeable, then the Zoning Board should deny the variance and that should be the end of it, and that Mr. Cipperly is the only property owner truly affected by this addition; that Mr. Brennanstuhl is adamantly opposed to the variance application, and that Mr. McGrath should be required to comply with Brunswick Code requirements like other property owners in town. Peg Cipperly, 210 Bulson Road, reiterated her husband's comments and stated that she was opposed to the variance application; that she was very disappointed that the Zoning Board was revisiting this matter; that the addition will still be very close to the Cipperly property boundary; then questioned what would happen to the foundation and deck that are currently constructed on the McGrath lot. Chairman Steinbach generally commented that Mr. McGrath, as the property owner, is proposing to reduce the size of the addition to the house, and that his current application is changed from his prior application request, and that Mr. McGrath does have the legal right to apply for this reduced variance as the facts are different. Chairman Steinbach stated that the Zoning Board would not entertain the same application as previously submitted by Mr. McGrath, but that he is proposing to reduce the size of the addition by one-half and is requesting a reduced side yard area variance. Christian McGrath, 205 Bulson Road, stated that he has not taken any trees down as a result of the construction to his house and that one tree has been trimmed, but that it is still standing, and it is located on his property; Mr. McGrath also

stated that Mr. Cipperly had planted corn for the last 3 years on his property in the same place, and it does not look like he had decided not to plant in the same location on his property; Mr. McGrath also stated that the addition to the house would be cut in half if this current application is approved, and that he is simply trying to salvage something from the construction of the addition that was clearly a mistake by his contractor since his contractor did not obtain the necessary building permit, and that he is not trying to hide anything. Mr. Bruno handed up pictures taken on November 17, 2014 regarding trees on the McGrath property. Mr. Cipperly stated that there are no trees in front of the addition to the McGrath house. Mr. Bruno stated that his client and Mr. Cipperly had tried to resolve this matter during the last application proceedings, but had failed to reach agreement; that the addition to the McGrath house does not impact the neighborhood, but rather Mr. McGrath is trying to improve the neighborhood. Member Hannan asked about Mr. McGrath's contractor. Mr. McGrath stated he has tried to track down his contractor, but he has not been able to do so and it looks like his contractor has "vanished". Peg Cipperly noted for the record that she felt badgered by Mr. McGrath's efforts to force a settlement of this matter previously, and that while this tree had been trimmed on the McGrath property, it has totally defoliated. Chairman Steinbach suggested to the Zoning Board members that the public hearing on this matter be continued at the December 15 meeting. The Zoning Board members generally concurred. This matter is adjourned and the public hearing will be continued at the December 15 meeting.

Two items of new business were discussed.

The first item of new business was an application by Karen Noon for an area variance for property located at 27 Eastover Road, specifically a right side yard setback of 6 feet for the replacement of a shed, whereas Town Code requires a 15 foot setback for the shed. Mrs. Noon

was present, and explained to the Zoning Board that there had been a shed on her property for 35 years, that she presumed the shed was grandfathered and had proceeded to have the old shed removed and had already ordered a new shed to be put in the same place, but realized that the new shed would not comply with the side yard setback requirements and is therefore asking for the variance from the Town. Mrs. Noon stated that the shed would be in the same location and would be the same size as the previous shed and that her neighbors were not opposed at all to the application. Mrs. Noon stated that there is really no other place for the shed in her backyard given the location of her septic system. Member Schmidt asked about the septic system location on the sketch map that had been submitted by Mrs. Noon. Mrs. Noon stated that the septic system was basically the entire half of her backyard along the entire length of Nicholas Drive, and therefore the shed had to be located on the other side of her backyard. The Zoning Board members determined that the variance application was complete and ready for public hearing. This matter is placed on the December 15 agenda at 6:00 pm for public hearing. Mrs. Noon confirms that the Zoning Board members had access to her property to see the property before the December meeting.

The next item of new business was a sign variance application submitted by AG Distributors & Suppliers for property located at 831 Hoosick Road, the new Ace Hardware store. Tom Dingley was present representing AG Distributors & Suppliers. Mr. Dingley generally reviewed the application, stating that Town Code allowed for the installation of two signs, whereas the owner of the Ace Hardware store was requesting approval for a total of 7 signs. Mr. Dingley stated that the size of the lettering as well as the total square footage of the proposed signs were compliant with Town Code, but that the owner of the Ace Hardware store was looking for a total of 7 exterior signs. Mr. Dingley explained the additional 5 signs being

requested are to display product names, so that potential customers know that certain brand name products were available in the Ace Hardware store. Mr. Dingley confirmed that the only variance required was on the total number of signs, not total square footage of signs or size of the lettering. Chairman Steinbach asked when the Ace Hardware store knew they wanted a total of 7 signs, and why the application for this variance was being made now when the renovation to the Ace Hardware store was nearly complete. Mr. Dingley stated that proposed signage on the Ace Hardware building was shown on the plans that were in front of the Brunswick Planning Board, and that the owner did not realize that he needed variances at time. Member Schmidt asked whether there was only one entrance to the Ace Hardware store. Mr. Dingley stated that there was only one main entrance, but that there was a side entrance near the outdoor display area. Member Schmidt stated that the additional signage was not needed for directional purposes, but was only needed for notification of certain brand name products. Mr. Dingley confirmed this. Member Schmidt asked why the additional brand names of products could not be shown on one sign rather than an additional five signs. Member Schmidt stated that if the size of the total square footage was compliant with Town Code requirements, why not show the brand name items on one sign, requiring a variance of only one additional sign instead of five additional signs in excess of Town Code requirements. The Zoning Board also stated that these proposed additional signs were not needed for directional purposes, but just for advertising purposes. Member Hannan questioned whether the signage could change in the future if particular brand name products changed that were being offered at the Ace Hardware store. Mr. Dingley did confirm that the product name could change in the future, but the signs would have the same style and size. Member Hannan thought the total number of signs requested were a problem, and could result in a significant number of signs on other commercial locations in Town. Member

Hannan did note that the Zoning Board had limited the Tractor Supply signage to a total of three signs. The Zoning Board requested Mr. Kreiger to confirm that the total square footage of the requested signs were within Town Code requirements. The Zoning Board members found the application to be complete and ready for public hearing. The matter is scheduled for public hearing at 6:15 pm at the Zoning Board's December 15 meeting.

The index for the November 17, 2014 meeting for the Zoning Board of Appeals is as follows:

1. Kent – area variance – 12/15/14 (public hearing to continue).
2. McGrath – area variance – 12/15/14 (public hearing to continue).
3. Noon – area variance – 12/15/14 (public hearing to open at 6:00 pm).
4. AG Distributors & Suppliers – sign variance – 12/15/14 (public hearing to open at 6:15 pm).

The proposed agenda for the December 15, 2014 meeting currently is a follows:

1. Noon – area variance - (public hearing to open at 6:00 pm).
2. AG Distributors & Suppliers – sign variance – (public hearing to open at 6:15 pm).
3. Kent – area variance - (public hearing to continue).
4. McGrath – area variance - (public hearing to continue).

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD December 15, 2014

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN, E. JOHN SCHMIDT, CAROLINE TRZCINSKI and ANN CLEMENTE.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

Chairman Steinbach welcomed Member Clemente to the Board, and thanked her for providing her time and public service to the Town of Brunswick.

The Zoning Board members reviewed the draft minutes of the November 17, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the draft minutes of the November 17, 2014 meeting were unanimously approved (Member Clemente abstaining) without correction or amendment.

The first item of business on the agenda was the area variance application submitted by Karen Noon for property located at 27 Eastover Road. The Zoning Board opened a public hearing on the application. The notice of public hearing was read into the record, also stating that the notice was published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach requested that Mrs. Noon identify herself and address for the record. Having done so, Chairman Steinbach then inquired of Mrs. Noon as to whether there were any changes to the area variance application. Mrs. Noon stated that there were no changes to the application. Mrs. Noon stated that she was looking to replace an old shed that she removed from her property with a new shed of the same size and location. Chairman Steinbach then opened the floor for the receipt of public

comment. Tom Sweeney, 19 Eastover Road, stated that he was the immediate neighbor to the Noon property and that he had spoken to more than half of the property owners on the service list for this public hearing, and that all of these neighbors were in favor in granting the area variance Mrs. Noon, including himself. There were no further comments from the public. Chairman Steinbach inquired whether the members of the Zoning Board had any questions on the application. Member Hannan wanted to confirm with Mrs. Noon that the size of the new shed was the size of the shed that had been removed. Mrs. Noon stated that the shed was the same size. Member Schmidt stated for the record that he had gone to this property but could not see the location of the shed given the snowfall. Member Steinbach noted that he had done the same site visit. Member Schmidt also stated that in his opinion, given the location of the septic system in the backyard, the proposed location of the shed was the only realistic place to locate the shed on the property. Chairman Steinbach again asked if there were any further public comments on the application. Hearing none, the Zoning Board closed the public hearing on the Noon area variance application. Attorney Gilchrist noted for the record that the application sought an area variance in a residential application, which constitutes a Type 2 action under the State Environmental Quality Review Act (SEQRA) and no further action under SEQRA is required. Member Steinbach asked whether the Zoning Board members were ready to proceed with deliberating on the application. All the Zoning Board members confirmed they were ready to deliberate and collectively felt that there was no significant issue on this application given the replacement of the same size shed in the same location on the property with no opposition from any of her neighbors. Attorney Gilchrist generally reviewed the standards for the grant of an area variance. Chairman Steinbach stated that in his opinion, the Noon area variance did not produce an undesirable change in the character of the neighborhood, since this was a

replacement in kind of a shed in the same location; that the area variance did not create a detriment to nearby properties, noting that none of Mrs. Noon's neighbors objected to the issuance of the variance; that given the location of the septic system in the backyard there was no feasible alternative to Mrs. Noon to put the shed in her backyard; that while the side yard setback is 15 feet under the Brunswick Town Code and Mrs. Noon seeks to place the shed 6 feet from the property line, Chairman Steinbach noted that a shed had been placed in that location for several years and this was merely a replacement in kind which did not raise to the level of a substantial variance; that the requested variance did not create an adverse effect on the physical or environmental conditions in the neighborhood; and that the application for the side yard setback was not necessarily self-created as Mrs. Noon was merely seeking to replace a shed that had been in the same location for several years. The remaining Zoning Board members concurred with these comments. Member Trzcinski then made a motion to grant the area variance on the Noon application which motion was seconded by Member Hannan. The motion was unanimously approved, and the area variance granted to the applicant.

The next item of new business was a sign variance application submitted by AG Distributors for the new Ace Hardware store located on Hoosick Road. The Zoning Board opened a public hearing on this application. The notice of public hearing was read into the record, noting that that public hearing notice had been published in the Troy Record, placed on the Town sign board, and posted on the Town website, and mailed to owners of all adjacent properties. Tom Dingley was present for the applicant. Chairman Steinbach inquired of Mr. Dingley as to whether there were any changes to the application from that described in the November meeting. Mr. Dingley stated that there were no changes to the application, and that that application sought the variance to allow the installation of a total of seven exterior signs on

the Ace Hardware Store, whereas the Town Code allows for a total of two exterior signs. Mr. Dingley did confirm that the total square footage of the signs was within Brunswick Code requirements, but that the total number of signs requested is above that allowed in the Brunswick Town Code. Chairman Steinbach then asked whether any members of the Zoning Board had any questions for Mr. Dingley. The Members of the Zoning Board had no questions for Mr. Dingley at this time. Chairman Steinbach then opened the floor for the receipt of public comment. No members of the public wished to comment on this application. Member Schmidt then made a motion to close the public hearing, which motion was seconded by Member Hannan. The motion was unanimously approved, and the public hearing on the AG Distributors sign variance application was closed. Attorney Gilchrist then stated that the sign variance application was subject to review under SEQRA, and directed the Zoning Board members to review the environmental assessment form in the application documents. Member Schmidt noted that the environmental assessment form needed to be corrected, since the form indicated that the use was compliant with the Brunswick Town Code, but that the total number of signs sought was not compliant with the Brunswick Town Code. The correction in the environmental assessment form was noted for the record. Member Hannan then stated that he was concerned about the impact of allowing the total number of signs on the Ace Hardware Store, and whether other businesses in that location would also want approval for additional signs. Mr. Hannan stated that he was pro-business, but that a significant number of signs can be overbearing. Member Hannan thought that the information sought to be located on the five additional signs could be set forth on one larger additional sign as opposed to a number of smaller signs. Mr. Dingley responded that the schematic of the sign proposal showed that the signs would blend in with the new exterior for the Ace Hardware building, that the lighting for these smaller additional exterior

signs was dimmer than that for the larger Ace Hardware sign in the center of the building, and that the smaller signs were in the nature of accent signs designed to advertise for brand name items on sale at the Ace Hardware store. Mr. Dingley also commented that the proposal was similar in nature to the exterior signage on the Wal-Mart and Price Chopper stores, which did advertise for products and services provided within each of those stores. Chairman Steinbach stated that these comments were directed more toward the variance application itself, and that the Zoning Board first needed to make a SEQRA determination. Member Schmidt made a motion to adopt a negative declaration under SEQRA, stating that he did not feel the additional signage on the Ace Hardware store would result in any significant adverse environmental impact. That motion was seconded by Member Trzcinski. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board then reviewed the standards for the grant of the sign variance. As to whether the additional signage resulted in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Clemente questioned whether the signage would be uniform in terms of font size, color, and overall sign size as depicted on the schematic submitted with the application documents. Mr. Dingley confirmed that the size of the signs, the color of the signs, and the general font size would all be uniform. Member Clemente asked about the brand names, and whether the signs to be used would include brand name logos or colors, rather than being the same size and color as depicted on the schematic. Mr. Dingley stated that the logo font or logo colors would not be used on the exterior signs and that the exterior signs will be uniform in terms of letter size and colors. Mr. Dingley stated that the particular brand logos would be used inside the store only, and that the same template would be used for all exterior signage. Member Trzcinski stated that the store already had all of the lighting set up for these additional signs, and was not pleased that

the lighting was installed without first having the signage approved by the Town. Mr. Dingley stated that the owner did not seek to undermine any decision of the Zoning Board but that the owner had not been aware of the need for a variance for the additional signage since the signs had been depicted on the site plan in front of the Planning Board, and further Mr. Dingley explained that completion of all electrical work as set forth on the approved plans needed to be completed in order to get a completed certificate of occupancy from the Town. As to whether the applicant had a feasible alternative to the requested total number of signs on the exterior of the building, Member Schmidt stated that in his opinion, an alternative was available by using one sign listing out a number of products rather than having a total of seven smaller signs on the exterior of the building. Member Hannan inquired whether one or two signs could be used with letters that were easily changeable; however, Member Hannan also suggested that the number of signs depicted on the schematic in the application documents were more aesthetically pleasing than one large sign in that one large sign might take away from the look of the new exterior of the building. As to whether the requested variance was substantial, Member Trzcinski stated that she felt that the requested variance was substantial, since the Town Code allowed only a total of two exterior signs and the applicant was seeking approval for a total of seven signs. Member Hannan wanted to confirm that the total square footage of all proposed signs still met Town Code requirements. Mr. Kreiger confirmed that the total square footage was in compliance with the Brunswick Town Code. Member Schmidt felt that the requested variance was less substantial given that the total square footage of the signs still met Town Code. Chairman Steinbach wanted to confirm that six of the proposed seven exterior signs were for the Ace Hardware store, and that the seventh sign on the exterior of the building was for the dance studio tenant. Mr. Dingley confirmed this. As to whether the requested variance would result in an

adverse effect on the physical or environmental conditions in the neighborhood, the Zoning Board noted that a SEQRA negative declaration had already been adopted on this application, and further Chairman Steinbach commented that this area of town had generally become commercial in nature and that there would be no effect on the environment or physical conditions in the neighborhood. All Zoning members generally concurred. As to whether the need for the variance was self-created, Chairman Steinbach noted that all requests for sign variances are generally self-created, but that this factor did not mean the variance couldn't be granted, and that the Board should deal with the merits of this application. Member Hannan stated that he struggles with the need for seven exterior signs, and was very concerned about the precedential value of the decision. Member Hannan stated that a total of seven signs could create a cluttered look, and be overkill. Member Hannan felt that seven signs are a lot of signs for one building. Chairman Steinbach wanted to confirm that all the exterior signs would be made of wood. Mr. Dingley stated that they would either be made of wood or a composite material to look like wood. Chairman Steinbach then asked whether the lettering on the signs would be painted, or would they be raised in a 3 dimensional pattern. Mr. Dingley was not certain on this issue, but confirmed that the signs would be uniform in character. Chairman Steinbach wanted to confirm that the signs being proposed were the same in scope as that depicted on the schematic. Mr. Dingley confirmed that the schematic was an accurate portrayal of the exterior of the building including the proposed signage. Chairman Steinbach asked whether the signs would be attached directly to the building, or be on some type of frame away from the exterior of the building. Mr. Dingley stated that the signs would be attached directly to the building and be flush to the exterior of the building. Chairman Steinbach wanted to confirm that the signs would be lit from overhead and not otherwise be illuminated. Mr. Dingley

confirmed that the lighting for the signs was already installed, and they consisted of low light LED goose neck lights, which were not as bright as the Ace Hardware store sign located in the center of the building. Member Hannan asked whether the Ace Hardware owner had any other options regarding signage if the variance was not granted. Mr. Dingley stated that the owner had not prepared any alternate plans and did not have any alternate plans at this time. Member Schmidt stated that he originally did not favor the application, but after having reviewed the application materials and the presentation, he felt that the signs blended with the building and looked consistent with the building exterior. Member Trzcinski felt that the building looks good as it is and installing the additional signs would make the building look like a carnival or a building in the Town of Colonie. Member Clemente stated that the schematic provided in the application materials showed a clean, symmetrical look to the proposed signage on the exterior of the building, which took away from any “carnival” look to the building. Member Clemente asked whether the Zoning Board had the authority to condition any approval for the variance. Attorney Gilchrist stated that the Board did have the authority to condition any approval. Chairman Steinbach asked if the board was ready to entertain a motion on the application in light of the deliberations held. The members were prepared to move forward on the application. Member Clemente then made a motion to approve the sign variance application subject to appropriate conditions. Upon deliberation, the Zoning Board members determined that the following conditions were applicable to the motion:

1. Each of the proposed signs was limited to 16 ½” x 84” size.
2. The location of the exterior signage must be consistent with the schematic included in the application materials, and any change in the exterior sign locations must be reviewed by the Zoning Board in an application to amend the variance.
3. The current overhead LED lighting for each of the exterior signs was acceptable, and that if any change was proposed to the lighting for the exterior signs, the applicant must first have that proposal reviewed by the Zoning Board through an application to amend the variance.

4. The signs may not include any specific brand logo or brand color, and that the signs must be uniform in terms of font/lettering size, including a maximum of eight inch vertical lettering on each of the exterior signs.
5. The exterior signs must be made of wood or composite materials to resemble wood, and that the materials must be uniform for all exterior signs.
6. The same color must be used for each of the exterior signs so that the color is uniform.
7. The exterior signage must be mounted flush to the exterior of the building.

Chairman Steinbach seconded the motion to approve the sign variance application subject to the stated conditions. A roll call vote was taken. Member Hannan voted aye; Member Trzcinski voted no; Member Schmidt voted aye; Member Clemente voted aye; Chairman Steinbach voted aye. The sign variance application was approved subject to the stated conditions by a vote of 4-1, (Member Trzcinski voting no).

The third item for business on the agenda was the area variance application submitted by David Kent for property located on Banker Avenue (Tax Map No. 71.17-2-1). Mr. Kent and attorney John Dowd were present on the application. Chairman Steinbach noted that this was the continuation of a public hearing which had been opened at the November meeting and kept open by the Zoning Board. Attorney Gilchrist noted that there was a question at the November meeting as to whether the current owners of 26 Banker Avenue and 28 Banker Avenue were provided notice of the public hearing, and noted for the record that following the November meeting, direct notice of the continuation of the public hearing was mailed to the current owners of 26 Banker Avenue and 28 Banker Avenue. Chairman Steinbach then opened the floor for receipt of additional comment on the application. Anthony DiNova, 28 Banker Avenue, stated that he was not sure where to go from here, but that he felt a large piece of his driveway would be impacted by his application. Mr. DiNova stated that he had moved into his home in May of 2013, and that this application would impact his property. Chairman Steinbach asked whether

there was already an asphalt driveway and walkway at the property when he purchased it. Mr. DiNova stated the asphalt driveway and walkway was already there when he bought the property. Chairman Steinbach inquired whether there were two driveways or one driveway for the DiNova property. Mr. DiNova stated there was one driveway that looped around his house, so that it appeared there were two driveways, but it was really one looped driveway. Member Trzcinski stated there was still an outstanding question as to who owned the right-of-way shown on the survey constituting the Banker Avenue paper street. Mr. Kreiger stated that he had conducted a search at the Town records and could not find a deed for Banker Avenue. Attorney Gilchrist asked the applicant whether he had completed any title work on the Banker Avenue paper street area. Attorney Dowd stated that he did have title work done by Trinity Abstract, and that the searcher could not find any record of a deed from the Bleakley Family to the Town of Brunswick for the Banker Avenue paper street, but that Attorney Dowd did speak with the Executor of the Bleakley estate who felt that the 40 foot Banker Avenue right-of-way was transferred to the Town sometime back in the 1950s. Attorney Gilchrist requested Attorney Dowd to submit the Trinity Abstract title report for review. Mr. Dowd stated that he would arrange for that. Member Trzcinski stated that she could not decide this application until that issue of ownership of the Banker Avenue paper street was resolved. Attorney Gilchrist stated that this was a significant issue, since different legal standards apply as to whether the property is owned by the Town or whether it is privately owned. Attorney Gilchrist also asked Mr. DiNova whether he had any title work done when he acquired his property in 2013. Mr. DiNova stated that he believed he had title work done, and will search for that title work and if he finds it he will provide it to the Town for review. Attorney Dowd stated that if it is ultimately determined that the property was not deeded to the Town of Brunswick, but still is titled in the Bleakley

family, he wanted to have the option considered as to whether Bleakley could transfer title to the Banker Avenue paper street to Kent, and whether that would make this application easier for the Zoning Board to consider. That matter will be entertained after the title work has been reviewed. Attorney Gilchrist stated that the title ownership of the Banker Avenue right-of-way is important, but that the Zoning Board needed to consider that if the public hearing is closed at the December meeting, the Zoning Board would have only 62 days in which to render a decision, which may not be adequate time to resolve the paper street ownership issue. The Zoning Board members considered this, and determined to keep the public hearing open until the ownership of the Banker Avenue paper street issue is resolved. The Zoning Board unanimously determined to keep the public hearing open, and continue the public hearing at the Zoning Board's January meeting. On that issue, the Zoning Board noted that the third Monday of January is a legal holiday, and determined that the Zoning Board meeting for January 2015 would be held on Monday, January 26. Attorney Dowd requested that if the ownership of the Banker Avenue paper street is not resolved by the January 26, that he be given notice and that the matter could then be moved to the February meeting. The public hearing on the Kent area variance application is held open and adjourned to the January meeting.

Mr. Kreiger reported that there were no items of new business.

The index for the December 15, 2014 meeting for the Zoning Board of Appeals is as follows:

1. Noon – area variance – granted.
2. AG Distributors – sign variance – granted subject to conditions.
3. Kent – area variance – 1/26/15 (public hearing to continue).

The proposed agenda for the January 26, 2015 meeting currently is as follows:

1. Kent – area variance - (public hearing to continue).
2. McGrath – area variance - (public hearing to continue).