

**Planning Board**  
TOWN OF BRUNSWICK  
336 Town Office Road  
Troy, New York 12180

**MINUTES OF THE PLANNING BOARD MEETING HELD August 16, 2012**

PRESENT were CHAIRMAN RUSSELL OSTER, MICHAEL CZORNYJ, FRANK ESSER, GORDON CHRISTIAN, DAVID TARBOX and VINCE WETMILLER. ABSENT was KEVIN MAINELLO.

ALSO PRESENT were JOHN KREIGER, Code Enforcement Officer, and MARK KESTNER, Consulting Engineer to the Planning Board.

Chairman Oster reviewed the agenda for the meeting. Chairman Oster indicated that there were three items on the agenda:

1. Reiser - Subdivision and Site Plan Application;
2. Pember - Waiver of Subdivision Application;
3. Wagar - Waiver of Subdivision Application.

Chairman Oster also noted that the Mulinio PDD Application had been approved by the Town Board for a paintball facility and that the application would be discussed under new business.

The Planning Board reviewed the draft minutes of the August 2, 2012 meeting. No corrections were noted. Member Czornyj made a motion to approve the minutes, which motion was seconded by member Wetmiller. The draft minutes of the August 2, 2012 meeting were then unanimously approved without amendments.

The first item of business on the agenda was the commercial subdivision and site plan application of Reiser Bros. Inc. for property located on NY Route 2 and NY Route 278. Mr.

Reiser was present for the Applicant. The Planning Board received a proposed Part 2 of the Environmental Assessment Form from Mr. Kestner. Mr. Kestner reviewed his proposed answers to Part 2 of the Environmental Assessment Form with the Board, which Mr. Kestner noted were based on his review of the application, Part 1 of the Environmental Assessment Form, the public hearings, and the Applicant's responses to public comments. The Planning Board reviewed the entirety of Part 2 of the Environmental Assessment Form. Chairman Oster summarized the discussion, noting that any questions that were answered "yes" on Part 2 of the Environmental Assessment Form were considered by the Board to be "small to moderate" impacts. Chairman Oster requested that Attorney Tingley review a resolution that had been prepared for the Planning Board's consideration. Attorney Tingley explained that the resolution before the Board, if adopted, would issue a SEQRA negative declaration for the project. Attorney Tingley asked the Board if any members had any questions, comments, or proposed revisions to Part 2 of the Environmental Assessment Form. Member Esser asked a question about whether the Applicant had obtained the necessary legal authority to construct proposed berms on adjacent properties. The Planning Board generally discussed whether that question was more appropriate for the substantive review of the subdivision and site plan application, as opposed to during the deliberation by the Planning Board on whether the proposed project could have a potential significant adverse environmental impact under SEQRA. Mr. Kestner explained that Part 2 of the Environmental Assessment Form that he prepared and submitted to the Board for consideration was based upon the application as presented, which presumed the Applicant would obtain the legal authority to construct the proposed berms. Mr. Kestner further explained that the Applicant would be responsible for obtaining that legal authority if the application is ultimately approved. Accordingly, it was decided that Member Esser's question concerning the Applicant's

authority to construct the proposed berms on adjacent properties did not impact the Planning Board's SEQRA determination, but instead would be more appropriate for the substantive review of the applications. Thereafter Attorney Tingley reviewed the history of the application and highlighted the various procedural steps and revisions that had occurred since the application was filed initially in or about March 2009. Chairman Oster asked the Board whether there were any questions or comments concerning the proposed resolution before the Board, and hearing none, a motion was made by member Czornyj to adopt the resolution before the Board to adopt a SEQRA negative declaration, which was seconded by member Christian, and which was put to a roll call vote as follows:

Chairman Oster – yes;

Member Czornyj – yes;

Member Esser – yes;

Member Christian – yes;

Member Tarbox – yes;

Member Wetmiller – yes;

Member Mainello – absent.

Thereupon the resolution was duly adopted by a vote of 6-0. Following the adoption of the negative declaration, Attorney Tingley explained the procedure to the Applicant, noting that the Applicant would then be required to seek and obtain special use permit approval from the Zoning Board of Appeals for one of the lots, and upon issuance of the special use permit, the Applicant could then present the substance of the subdivision and site plan application to the Planning Board at that time. It was noted that the next Zoning Board of Appeals meeting was scheduled for Monday, August 20, 2012. Attorney Tingley advised the Applicant that he should

coordinate with the Zoning Board of Appeals directly to determine whether or not the special use permit application is on the agenda for the next Zoning Board of Appeals meeting, and if it is not, then he should ensure that it is placed on the agenda for the regular September meeting of the Zoning Board of Appeals. Attorney Tingley asked the Applicant if he was in agreement with the procedure as explained, and the Applicant confirmed that he agreed. This matter is tentatively placed on the September 6 agenda for further consideration in the event the Zoning Board of Appeals issues a special use permit prior thereto.

The next item of business on the agenda was the waiver of subdivision application by John Pember for property located on Creek Road. John Pember, Sr., residing at 17 Langmore Lane was present for the Applicant. Chairman Oster explained that the Planning Board had previously asked for additional information on the location of septic systems and wells on adjacent properties, and that the Applicant had submitted the additional information. Mr. Kreiger noted that the property is located in an Agricultural District and that an Agricultural Data Statement had been prepared and filed. The Agricultural Data Statement has been sent to the person(s) that must receive notice, and no comments or questions have been received back. Member Czornyj explained to the Applicant that although the Planning Board needed the information concerning the location of existing wells and septic systems on adjacent lots, the approval of the well and septic system on the proposed subdivided lot is within the jurisdiction of the Rensselaer County Health Department, and that any approval of the application would be conditioned on the Applicant receiving approval for the well and septic from the Rensselaer County Department of Health. It was also explained that any approval of the project would be conditioned on a building permit being issued within six months of approval, with the principal residence being completed within two years of issuance of the building permit. The Applicant

understood the conditions. Thereafter, Member Czornyj made a motion to adopt a SEQRA Negative Declaration, which motion was seconded by Member Christian, and the Negative Declaration was unanimously approved. The Board then considered action on the application. Member Christian made a motion to approve the application subject to the conditions that the Applicant obtain Rensselaer County Department of Health approval for the well and septic system for the proposed lot, and that the Applicant obtain a building permit for the principal residence within six months and that construction of the principal residence be completed within two years of the issuance of the building permit. Member Wetmiller seconded the motion and the motion was unanimously approved. Mr. Kreiger explained that the Applicant would submit a final survey now that the application was approved, and the Applicant confirmed that he was awaiting to do a final survey in case the Board sought minor lot line adjustments. The Applicant confirmed that he would submit a final survey in accordance with the approval granted by the Planning Board.

The next item of business on the agenda was the Wagar waiver of subdivision application. Chairman Oster noted that the Town has determined that Higbee Road is not a Town road, and that the Planning Board, with the consent of the Applicant, has adjourned this particular item pending a resolution on this issue. Mr. Holbritter, on behalf of the Applicant, and Mr. Kreiger confirmed that a meeting is scheduled for Thursday, August 23, 2012 to discuss this issue.

There were three items of new business presented to the Planning Board. The first item of new business was the Mulinio Planned Development District, which is currently before the Planning Board for site plan review. Attorney Thomas Kenney, Esq., appeared on behalf of the Applicant. Mr. Kenney explained that small changes occurred to the proposal as a consequence

of the public hearing held by the Town Board and Town Board review of the PDD application. Mr. Kenney summarized the changes as follows: (1) One field was moved at the request of a neighboring property owner; (2) A sign would be installed at the entrance to the project site to direct exiting traffic to Oakwood Avenue; and (3) A moveable storage facility would be placed on the site.

Chairman Oster asked Mr. Kenney whether the photograph inset on the site plan was representative of the storage unit that would be placed on the property. Mr. Kenney confirmed that the photograph was representative of the proposed storage unit. Mr. Oster then explained that he understood that the Town Board had held a public hearing on the PDD application and further noted that the Planning Board does have the option to hold a public hearing for site plan review. Chairman Oster then discussed the letters submitted by the Applicant in response to public comments that were made to the Town Board during its review of the PDD application, as well as the review letter of the Town Board's consulting engineer, Ron LaBerge. It was further noted that the conditions that were outlined in the LaBerge letter had been incorporated into the Town Board's PDD approval. Chairman Oster then asked for discussion on whether the Planning Board should hold a public hearing. The Planning Board generally agreed that there was no reason to hold another public hearing on this project. The comments that had been received at the Town Board public hearing on the PDD application were generally discussed and a copy of the resolution approving the PDD, which outlined the various conditions imposed on the project, was provided to the Planning Board members. Chairman Oster asked the Applicant whether the property would be posted and Mr. Kenney responded that the property would be posted. Chairman Oster indicated that it was his understanding that there was a concern that children would wander onto the property during paintball events and possibly be struck by

paintballs. He then explained that he discussed this issue with Attorney Gilchrist, and it was concluded that posting the property was sufficient to put persons on notice that they should not enter the property. Attorney Kenney agreed, and further noted that it would be very difficult for a person to wander onto the site given the wooded buffer surrounding the project site. Chairman Oster also asked whether the project would generate noise. Attorney Kenney explained that tests were performed at the site and that it was determined by the Town Board's consulting engineer that the noise from the paintball guns was not significant. Mr. Tingley also explained that it was his understanding from the Town Board's review of the application that the Applicant had agreed to fill the obstacles with water or sand to minimize reverberation of those obstacles when struck by paintballs. The Applicant also confirmed there would be no use of actual firearms at the property. Chairman Oster noted that the material before the Planning Board had been received on Tuesday, August 15, 2012. The Planning Board agreed that this matter should be placed on the September 6, 2012 agenda for further consideration.

The next item of new business was an application made by Larry Vartigian. A map of a lot line adjustment that had been approved in December, 2009 was provided to the Board. Brian Holbriiter appeared on behalf of the Applicant, and explained that the approval of the lot line adjustment in 2009 was intended to merge into an existing 1.3 ± acre lot owned by Larry Vartigian a 1.88 ± acre portion of adjoining property then owned by Mr. Ashcroft. Mr. Holbriiter and Mr. Kreiger explained that the minutes of the Planning Board approving the lot line adjustment conditioned the approval on merging the 1.88 ± acre parcel with the Applicant's existing 1.3 ± acre parcel. Mr. Holbriiter explained that due to an error in the Rensselaer County Clerk's Office, the 1.88 ± acre parcel apparently was not formally merged with the 1.3 ± acre parcel. Mr. Holbriiter further explained that he was appearing on behalf of the Applicant in

order to seek from the Board its direction on what approval would be necessary to make the 1.88 ± acre lot an approved building lot. Chairman Oster asked Mr. Holbriiter whether the barn that existed on the 1.88 ± acre lot was previously existing, and Mr. Holbriiter confirmed that it was. The Applicant confirmed that the existing barn was structurally sound and that he had just put a new concrete floor in the barn. It was explained to the Applicant and Mr. Holbriiter that if the 1.88 ± acre lot is approved as a separate building lot, such approval would be conditioned on obtaining a building permit within six months of approval and that construction be completed within two years of issuance of the building permit. The Applicant explained that the intention was to allow his son to construct a home on the 1.88 ± acre lot. Member Czornyj asked Mr. Holbriiter whether the lot has sufficient sight distance for ingress and egress at Plank Road. Mr. Holbriiter indicated that he had reviewed that and that the lot does have sufficient sight distance. The Planning Board then discussed whether the application should be made in the form of a waiver of subdivision application or whether additional procedures were required to approve the lot as a buildable lot. Attorney Tingley explained that if the prior approval of the lot line adjustment was conditioned on merging the 1.88 ± acre lot with the existing 1.3 ± acre lot owned by Mr. Vartigian, and that the merger never occurred, then as a legal matter, the approval never took effect. Attorney Tingley explained that this may create a difficult legal issue and that additional research would be necessary to determine what approvals would be required to create the 1.88 ± acre lot as a separate building lot from the Town's planning and zoning perspective. It was generally discussed that the Rensselaer County tax map showed the 1.88 ± acre parcel as a separate lot. Mr. Tingley explained that the designation of the 1.88 ± acre parcel on the tax map as a separate lot does not necessarily mean that the lot was created as a separate lot from the Planning Board's perspective. Attorney Tingley asked Mr. Holbriiter whether the deed for the

lot described the lot as one single lot inclusive of both the 1.3 ± acre existing lot and the 1.88 ± acre parcel, or instead if there were two separate deeds for the 1.3± acre lot and the 1.88± acre parcel. Mr. Holbriiter indicated that it was his understanding that the parcels were separately described in two separate deeds. The Planning Board generally discussed whether or not an error on the part of Rensselaer County to merge the lots had any impact on whether the condition of approval requiring merger was satisfied. Mr. Tingley explained that the satisfaction of any conditions of approval were the obligation of the Applicant, and that once approval is granted on certain conditions, it is the Applicant's responsibility to make sure those conditions are satisfied. He explained that the failure to merge the lots could have been caused by either an administrative error by the County or by something the Applicant did or did not do. Mr. Holbriiter stated that he believed it was an error on the part of the County. Attorney Tingley indicated that it would take additional research and a review of relevant records to determine exactly what happened with respect to the 1.88 ± acre parcel and how the situation could be addressed to accommodate the Applicant's desire to create a building lot. Attorney Tingley explained that one option would be to approve the lot line adjustment again that had been approved in December, 2009, allow the Applicant to formally merge the parcels, and then to have the Applicant make an application to subdivide the parcels as necessary to create two legal lots. Attorney Tingley also explained that other options may be available as well, and that additional research and review of records would be performed. Mr. Holbriiter explained that he would be meeting with Mr. Kreiger on another matter on Thursday, August 23, 2012 and that if possible, he would appreciate if the review could be done by then so that he would have some direction for the Applicant at that time. Attorney Tingley explained that he would attempt to have that review done in time for the

meeting to be held on Thursday, August 23, 2012. This matter was placed on the agenda for the September 6 meeting for further discussion.

The next item of new business was the Carbone Auto Group site plan application for property located on the south side of Hoosick Street, opposite the existing Carbone dealership. Mr. Kreiger explained that the current sketch plan that was submitted and provided to the Board indicates that the existing building on the property (the former Grand Union building, which is currently vacant) would be renovated and reused. Member Czornyj asked whether the Planning Board can seek additional green space in the front of the project site, i.e., beyond the existing green space that was already on the site. Attorney Tingley explained that the Planning Board was reviewing this application as a new site plan application and that it could seek revisions as it deemed necessary. Mr. Kreiger explained that the existing Carbone Subaru Dealership would be relocated from the opposite side of Route 7 to the proposed site, and that it would also include a used car dealership. The Planning Board generally discussed what would happen with the existing Carbone Dealership building which would then be vacant. Mr. Kreiger explained that the existing Carbone Dealership building was not owned by the Carbone Auto Group. Attorney Tingley noted that presumably, the landlord would seek to re-lease the building. This matter will be placed on the September 6 agenda for further discussion.

Chairman Oster then reviewed the items that would be placed on the September 6<sup>th</sup> agenda as follows:

Reiser Bros., Inc. – commercial subdivision and site plan application (tentative; depending on whether the Zoning Board of Appeals issues a special use permit prior to the September 6 meeting);

Mulinio - site plan application;

Vartigian – waiver of subdivision application;

Carbone Auto Group – site plan application.

Thereafter, Member Czornyj made a motion to adjourn the meeting, which motion was seconded by Member Christian, and which was unanimously approved.

The index for the August 16, 2012 meeting is as follows:

1. Reiser Bros., Inc. – commercial subdivision and site plan – 9/6/12;
2. Pember – waiver of subdivision – approved with conditions;
3. Wagar – waiver of subdivision – adjourned without date;
4. Mulinio – site plan application – 9/6/12;
5. Vartigian – waiver of subdivision – 9/6/12;
6. Carbone Auto Group – site plan application – 9/6/12.

The proposed agenda for the September 6, 2012 meeting currently is as follows:

1. Reiser Bros., Inc. – commercial subdivision and site plan;
2. Mulinio – site plan application;
3. Vartigian – waiver of subdivision;
4. Carbone Auto Group – site plan application.