

**TOWN OF BRUNSWICK**  
**ZONING BOARD OF APPEALS**

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

**DRAFT MINUTES**

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on October 18, 2010, at 6:00 P.M.

Present at the meeting were: Martin Steinbach, Member  
E. John Schmidt, Member  
Mark Cipperly, Member  
Caroline Trzcinski, Member  
James Hannan, Chairman

Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:00 P.M.

The first item of business was approval of the Minutes of the September 2010 meeting. Member Trzcinski noted one correction: On page 2, first full paragraph, fourth line, the word "Board" should be inserted after the word "Planning". Member Trzcinski made a motion to approve the September 2010 Minutes as corrected. Member Steinbach seconded. The motion carried 5 - 0.

The next item of business was the appeal filed by OAKWOOD PROPERTY MANAGEMENT, LLC, from a Notice of Violation issued by the Code Enforcement Officer pursuant to the Zoning Ordinance and Site Plan Review Act of the Town of Brunswick, in connection with appellant's business activities located at 215 Oakwood Avenue. Attorney Cioffi recounted the background regarding this matter. Essentially, he stated, the Code Enforcement Officer had issued a Notice of Violation regarding various business activities undertaken by Oakwood on various parcels of land owned by them. Oakwood filed an appeal to this Board. The appeal was noticed for the September meeting of this Board. When the appeal came on to be heard, it was adjourned by the Chairman because Oakwood had made a proposal to the Town to resolve this appeal and the Planned Development District application pending before the Town Board, which was to be formally presented to and considered by the Town Board at a Special Meeting to be held on September 30, 2010. Thereafter, at its October 14, 2010, Regular Meeting, the Town Board adopted a Resolution to enter into a Memorandum of Agreement with Oakwood which could, by its terms, resolve all outstanding issues between Oakwood and the Town including this appeal. Because the Memorandum of Agreement includes an agreement that this appeal be stayed while the proceedings contemplated in the Memorandum of Agreement were being pursued, the consent of this Board to the terms of the Memorandum of Agreement is required. Attorney Cioffi further explained that the Board had before it a draft Resolution which, by its terms, consented to the terms of the

Memorandum of Agreement already approved by the Town Board. Attorney Cioffi noted that Member Steinbach, who had previously recused himself from consideration of this matter, was still in the room. Member Steinbach then left the room, noting his recusal.

Attorney Cioffi then went through the terms of the Memorandum of Agreement. Essentially, the Agreement provided that Oakwood would relocate its existing business activities on two parcels of land which are zoned "Schools and Cemeteries" to another parcel it owns on Oakwood Avenue, known as the "Haslinger parcel", which is zoned industrial, and seek amended site plan approval from the Planning Board for that move. At the same time, Oakwood would file an application with the Town Board to change the zoning of the two "Schools and Cemeteries" parcel to B-6, which is the Town's light commercial zoning designation. The re-zone application to the Town Board, and the amended site plan application to the Planning Board, would be considered on their merits by the respective Boards. If the re-zone and the amended site plan are approved, then Oakwood's business activities would be totally moved off the "Schools and Cemeteries" parcels, and on to the Haslinger parcel. That would leave all of Oakwood's business operations on parcels zoned industrial. While those applications are pending, the PDD application and this appeal would be stayed, and Oakwood would follow "best management" practices on its current operations to minimize any effects on nearby property owners. If either the re-zone application or the amended site plan application was denied, the Memorandum of Agreement would terminate and this appeal and the PDD application would again be pursued.

Member Schmidt made a motion to go into private session to ask legal questions of Mr. Cioffi. Member Trzcinski seconded. The motion carried 4 - 0. The Board then went into private session. Legal questions were asked of the Town Attorney. No action was taken. Member Schmidt made a motion to return to Regular Session. Member Trzcinski seconded. The motion carried 4 - 0. Attorney Cioffi then read the draft Resolution aloud. The Chairman stated that the public hearing had not been opened in this matter, but that he would allow the attorneys for Oakwood and for the nearby property owners to give arguments as to why the Board should or should not adopt the Resolution approving the Memorandum of Agreement.

Donald Zee, Esq., the attorney for 35 households who claim to be effected by Oakwood's business activities submitted a letter dated October 18, 2010, raising various legal arguments as to why this Board should not consent to the terms of the Memorandum of Agreement. He also submitted excerpts from the Zoning Ordinance and the Town Law in support of his position. He argued that this Board did not have the power to approve this Agreement; that it only had the duty and responsibility to decide appeals coming before it, like this one. He stated that Oakwood, by entering into the Memorandum of Agreement, had acknowledged its violations and was now trying to stop the pending enforcement proceedings. Further, that Oakwood submitted deficient scoping documents on its PDD application. He also stated that the SEQRA determination made by the Town Board regarding the approval of the Memorandum of Agreement was invalid. He urged the Board not to be the "puppet" of the Town Board and to reject the Agreement and go forward with the appeal. Todd Mathis, Esq., of Whiteman, Osterman and Hanna, attorneys for Oakwood, stated that this Board's consent to the terms of the Memorandum of Agreement makes perfect sense and simply allows proceeding to settle this matter to go forward. Holding a public hearing on the appeal at this time does not mean that there would be a decision anytime soon. Under the law, the Board and Oakwood could agree to put off the issuance of a decision on the appeal indefinitely.

The Board then proceeded to consider the draft Resolution. Member Schmidt offered the Resolution. Member Trzcinski seconded. A roll call vote was taken and the four Members present all voted in the affirmative.

The next item of business was issuance of the Board's decision in the appeal and petition of CHARLES D. ALUND, JR., owner-applicant, dated April 13, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a Storage/Garden Shed on a lot located at 63 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the front yard setback in that 75 feet is required and 42 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 7 feet is proposed. Attorney Cioffi stated that the Board had before it a draft Determination and a proposed Resolution adopting the Determination. Attorney Cioffi stated that the draft Determination, which had been provided to the Board well in advance of this meeting, essentially grants variances to Mr. Alund, but not to the extent he requested. Rather, the Determination provides that the front line setback from Woodcut Lane would be reduced to 52 feet, and the rear lot line setback reduced to 17 feet, on the conditions that the concrete pad illegally built by the applicant be removed and that the applicant plant two mature trees to minimize the visual impact of the shed on the adjoining neighbor. Chairman Hannan offered the Resolution. Member Schmidt seconded. A roll call vote was taken and all Members voted in the affirmative. The Resolution was adopted 5 - 0.

The Board noted that there was no appearance on the appeal and petition of RONALD LEVESQUE o/b/o HOFFMAN DEVELOPMENT, applicant, dated August 13, 2010, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of a free-standing advertising sign on a lot located at 672 Hoosick Road. The Board put the matter on the agenda for the November 15 meeting.

The Board noted that there was no appearance on the Request for a Special Use Permit of REISER BROTHERS, INC., owner-applicant, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction and operation of a filling station on property located at the corner of NY Route 278 and NY Route 2, in the Town of Brunswick. Attorney Cioffi noted that the Planning Board had assumed lead agency status on a site plan application which encompassed the proposed filling station and that no SEQRA determination had been made. The Board put the matter on the agenda for the November 15 meeting.

As to the appeal and petition of PETER MAY o/b/o CAP COM F.C.U., applicant, dated August 21, 2010, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of a free-standing advertising sign on a lot located at 799 Hoosick Road, the Board noted that the application had been withdrawn.

There being no further business, Member Cipperly made a motion to adjourn. Member Steinbach seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.  
October 30, 2010

Respectfully submitted,

  
THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary