

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

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**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 September 19, 2011, at 6:00 P.M.

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

Member Steinbach was absent. Also present were 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 Chairman called the Regular Meeting to order at 6:00 P.M.

The Chairman noted that the August, 2011 Minutes would be considered for approval at the October meeting.

The next item of business was further consideration of the appeal and petition of WAL-MART REAL ESTATE BUSINESS TRUST, owner-applicant, dated April 11, 2011, for a variances pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of signage for the proposed Wal-Mart Supercenter expansion at 760 Hoosick Road. Attorney Mary Beth Slevin and Charles Jordan appeared for the applicant. Attorney Slevin noted that the amendment to the Wal-Mart planned development district to permit the Supercenter expansion had been granted by the Town Board. Site plan approval is pending before the Planning Board. The matter of the signage at the Supercenter needs to be resolved by this Board. Ms. Slevin stated that due to concerns expressed by the Board at an earlier meeting, the application has been amended. The Board had indicated that the proposed pylon sign was too large and excessive in height. The proposal has now been revised to make the pylon sign 20 feet in height and less than 35 sq. ft. in area on each side. Additionally, the applicant realized that it had miscalculated the area of the signage in the original variance application. They are now requesting total signage of 362 sq. ft., including the pylon sign, which is only 62 sq. ft. over the maximum allowed of 300 sq. ft. Ms. Slevin also noted that they wanted the letters on the main Wal-Mart sign to exceed the maximum permitted height of 3 feet. This was shown on the original drawings but no specific request for a variance on that issue was made.

There were no comments from the Board or the public. Attorney Cioffi inquired about the referral to the County. Mr. Kreiger stated that the County had indicated that local considerations

should prevail. It was noted that the SEQRA review had been completed on a coordinated basis in the context of the PDD amendment review. Attorney Cioffi explained that the requested variance concerning the size of the letters on the main sign was not included in the hearing notice. To proceed, he stated, a new hearing notice would need to be prepared and published. It will be heard at the October 17 meeting. Member Trzcinski made a motion to continue this matter to October 17 as well. Member Cipperly seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of DANIEL and JACKLYN LINDEMAN, owners- applicants, dated July 14, 2011, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a storage shed on a lot located at 1 Diana Place. There was no appearance by the applicant.

The next item of business was further consideration of the appeals filed by Oakwood Property Management LLC from the Notices of Violation issued by the Code Enforcement Officer in connection with Oakwood's business operations at 215 Oakwood Avenue. The Chairman noted that he had previously recused himself with respect to this matter and left the hearing room. Member Cipperly assumed the role of Temporary Chairman as he had during the public hearing on the appeals. Attorney Cioffi stated that the public hearing on the appeals had been conducted and closed and that the Board was still within its statutory period to render a decision. He noted, however, that an issue had been raised by the appellant that needed to be addressed by the Board. Specifically, Supervisor Herrington had written and submitted a letter to the Board responding to statements made at the public hearing to the effect that Supervisor Herrington had a conversation with Brendan and Sean Gallivan regarding whether they should purchase the 43 acre parcel of land zoned "Schools and Cemeteries", which is one of the subjects of this proceeding. In its Brief, Oakwood objected to the Supervisor's submission of that letter and stated that either the letter should be rejected by the Board or the public hearing should be reopened to allow Oakwood to respond to the Supervisor Herrington's letter.

Member Cipperly stated that he had read Supervisor Herrington's letter. It was received after the fact, after the public hearing. Member Schmidt stated that he is open to either rejecting the letter or reopening the public hearing on the issue raised in the letter. Attorney Cioffi was asked whether the Board could reopen the public hearing on the single issue of the alleged conversation between Supervisor Herrington and the Gallivans regarding the purchase of the 43 acre parcel. Attorney Cioffi stated that in his opinion, the Board would have the power and discretion to do so.

Attorney Lawrence Schillinger, representing Oakwood, stated that he was reiterating Oakwood's request - either reject the Supervisor's letter or reopen the public hearing. He stated that Oakwood was prepared to have the public hearing reopened. Attorney Andrew Gilchrist, representing the Code Enforcement Officer, stated that he had no objection to reopening the hearing so long as it was limited to the single issue.

Member Trzcinski made a motion to go into private session to ask questions of the Board's attorney. Member Schmidt seconded. The motion carried 3 - 0. The Board went into private session. At the conclusion of the private session, Member Schmidt made a motion to return to Regular Session. Member Trzcinski seconded. The motion carried 3 - 0. Attorney Cioffi noted that legal questions were asked and answered in the private session and no formal action was taken.

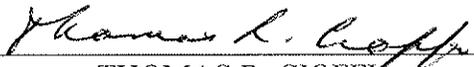
Member Trzcinski made a motion to reopen the public hearing on the appeals for the purpose of receiving testimony and evidence from the parties, only, on the sole issue of a conversation which is alleged to have occurred between Sean and Brendan Gallivan and Supervisor Herrington pertaining to the purchase by the Gallivans or one of their companies of the 43 acre parcel zoned "Schools and Cemeteries" which is one of the subjects of the proceeding. Member Schmidt seconded. The motion carried 3 - 0. The hearing on that issue will be held on October 17. A hearing notice will be published.

Harry Esspathiadies, 116 Hickory Court, asked about the procedure for the reopened hearing and also asked for a copy of the letter Supervisor Herrington had submitted to the Board. Attorney Cioffi explained the procedure but stated that he would need to think about the document request and suggested that he could file a FOIL request if he wished. Michael Schongar stated that he wants a copy of the letter as well. If the Gallivans have a copy of the letter, why can't he have it. Attorney Cioffi noted that Oakwood is a party to the appeal and the neighbors residing in North Forty are not. Attorney Cioffi stated that he would give further consideration as to whether the letter was a public document that could be disclosed but wanted to make sure that there were no mistakes made in procedure.

Member Schmidt then made a motion to adjourn. Member Trzcinski seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.  
September 28, 2011

Respectfully submitted,

  
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THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary