

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 October 17, 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.

As to the August, 2011 Minutes, Member Trzcinski noted that on page 4, 3rd line from the top, the word "new" should read "knew". Also, she noted, that on page 5, third paragraph, eighth line from the bottom, the words "that that" should read "that they". Member Schmidt made a motion to approve the Minutes as corrected. Member Cipperly seconded. The motion carried 4- 0.

As to the September, 2011, Minutes, Member Trzcinski noted that on page 2, sixth line from the top, there is an indication of a 5 - 0 vote on a motion. There were only four members present so the vote should have been 4 - 0. Member Trzcinski made a motion to approve the Minutes as corrected. Member Schmidt seconded. The motion carried 4 - 0.

The next item of business was the appeal and petition of PAT PATTERSON - THE SIGN RESOURCE o/b/o TRACTOR SUPPLY CO. , applicant, dated September 14, 2011, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of signage for the Tractor Supply Co. store to be located at 864 Hoosick Road, in the Town of Brunswick, because a maximum of two (2) signs are permitted for the site and three (3) signs are proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Member Cipperly stated that he was recusing himself from this matter and left the meeting room. Fred Early, from Sign Works, 27 Carey Road, Queensberry, stated that his firm was appearing for The Sign Resource. He stated Tractor Supply Co. wants a second wall sign on its building, the same as the existing, approved sign that you see coming east. They are concerned about identification of the business from the west bound approach. Coming west, you go up a grade, and all you see is a block building. People need identification time so they can shift lanes, etc., without

causing traffic problems. The pylon sign is fairly small and mainly identifies the entrance way so people don't try to enter on McChesney Avenue. Mr. Kreiger noted that the Planning Board did not address the third sign issue, but did state that it did not want to see a bare block wall on the building. He also stated that adding the third sign would not exceed the total permitted signage.

The Chairman stated that the main sign on the building is very visible. Mr. Early stated that the problem was the western approach. Reed Bissell, 54 Deepkill Road, stated that this is the ugliest building in Town. The owners were aware of the Sign Law when they came to town. Member Trzcinski said she does not think the third sign is needed and suggested that maybe they could revamp the other signs. Mr. Kreiger said that the pylon sign is already at its maximum. Mr. Early stated that the hardship is the western approach. Making the other sign bigger will not help.

Mike Czornyj, Planning Board member, reiterated that the Planning Board did not say there should be another sign. The Planning Board just stated that they should spruce up the building with a reverse dormer. The Chairman stated that he would like to see the building completed and then decide about the third sign. He wants to hold hearing open. Mr. Early stated that the only issue is line of sight and traffic safety. Mr. Kreiger stated that County Planning had returned the referral stating that local considerations should prevail. Attorney Cioffi asked whether the applicant had submitted an EAF. Mr. Kreiger said he would have them submit one. The Chairman made a motion to continue the public hearing to the next meeting. Member Schmidt seconded. The motion carried 3 - 0.

The next item of business was the appeal and petition of WAL-MART REAL ESTATE BUSINESS TRUST, owner-applicant, dated September 2, 2011, for 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, in the Town of Brunswick, because the proposed signage violates the maximum permitted letter height of 3 feet (3') in that three (3) letters are proposed to be 5 feet 6 inches (5' 6") in height and four (4) letters are proposed to be 4 feet 3 and one-quarter inches (4' 3 1/4") in height. Attorney Cioffi read the Notice of Public Hearing aloud.

Mary Beth Slevin, Esq., and Charles Jordan, Architect, appeared for Wal-Mart. Attorney Slevin stated that this is part of the 30,000 sq. ft. expansion of the existing store. There are 8 signs on the existing building. Wal-Mart now proposes 5 signs on the building and one pylon sign. The pylon sign is necessary for traffic coming from the west. The signs on the store are not visible from that direction. Except for the "Wal-Mart" sign on the building, the rest of the signs are directional, showing the location of the various major areas of the store. Mr. Jordan added that there are 3 vestibules in the new store, each identified by a sign. This specific variance involves only the proposed "Wal-Mart" sign on the building. They want the W, L and the T to be 5'6" in height, and the rest of the letters to be 4' 3 1/4" in height.

At Attorney Cioffi's request, Attorney Slevin summarized the relief requested in the two pending variance requests. Wal-Mart is asking that the maximum total signage be increased from 300 sq. ft. to 362 sq. ft. They also request that 6 signs be permitted, rather than 2. Finally, they are requesting to exceed the 3' letter height maximum as indicated above. The pylon sign proposal was modified so a variance is no longer required. Jim Tkaick, Route 2, questioned the pylon sign. He

noted that they are rare for Wal-Marts. Subway probably has the highest sign in town. Reed Bissell stated that why have a law if you are just going to make exceptions to it.

Member Trzcinski stated that she did not think the oversized letters were needed. Member Schmidt stated that the directional signs are convenient and the total square footage requested does not seem out of line. He is concerned about the oversized letters. The Chairman stated that he is also concerned about the oversized letters.

Member Schmidt made a motion to close the public hearing on the sign variance requests. Member Cipperly seconded. The motion carried 4 - 0. A written decision will follow.

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. Member Cipperly stated that the public hearing on the appeals was reopened by the Board last month solely 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 parcels involved in this proceeding. Attorney Cioffi read the Notice of Public Hearing pertaining to the reopened public hearing aloud. Member Cipperly reiterated that the public hearing would be limited to receiving evidence and testimony from the appellant and from the Town, only, on the limited issue mentioned previously. He then asked John Henry, Esq., representing the appellants, to proceed.

Attorney Henry stated that the hearing tonight was limited to the one issue. Supervisor Herrington submitted a letter to the Board in the Town's post-hearing submission on the appeals. Appellants responded with an affidavit from Sean Gallivan. They also asked that the hearing be reopened. In addition to the Affidavit from Sean Gallivan, Mr. Henry handed up an Affidavit from Brendan Gallivan pertaining to the alleged conversation they had with Supervisor Herrington.

Attorney Henry stated that the issue is what the Gallivans were told by Supervisor Herrington before they purchased the 43 acre parcel zoned "Schools and Cemeteries". A conversation did take place with the Supervisor. That such a conversation occurred is consistent with the Town putting that parcel in an Empire Zone. Clearly, the Gallivans purchased this property with the full knowledge of the Town. The appeals should be sustained and the Notices of Violation stricken.

Member Trzcinski said she had a problem with the fact that, assuming the conversation did take place as claimed, the Gallivans did not get anything in writing from the Supervisor. They are business savvy people. Attorney Henry countered that they exercised due diligence by going to the Town in the first place. Member Trzcinski also asked why the Gallivans did not make inquiries when the parcel was assessed as if it were zoned Industrial when it was not. Mr. Henry also stated that the "writing" confirming that the conversation between the Gallivans and Supervisor Herrington had taken place is the Empire Zone designation granted by the Town.

Member Cipperly asked what the Gallivans mean when they say they “went to the Town”. Attorney Henry stated they were referring to pre-purchase meetings with Supervisor Herrington, and matters pending before the Town Board, Planning Board and the Code Enforcement Officer.

Member Cipperly then recognized Attorney Andrew Gilchrist, representing the Town. Mr. Gilchrist stated that the only ways that property can be used for something for which it is not zoned is to obtain a change in zoning from the Town Board or obtain a use variance from the Zoning Board of Appeals. The Gallivans did neither in this case. They just used the 43 acre parcel zoned “Schools and Cemeteries” for industrial uses to expand its business. Attorney Gilchrist also noted that in 2002, Oakwood went to the Planning Board for site plan approval on its original 5 acre parcel which is zoned Industrial. They also went back to the Planning Board 2 years later to amend its site plan to expand a garage on the property. This begs the question of why Oakwood did not go back to the Planning Board when it expanded its business operations onto the 43 acre parcel and the 26 acre parcel.

Attorney Gilchrist also noted that there were three applications to the State for Empire Zone designation on their properties. One was made by SM Gallivan, Inc. A second was made by another entity. The only Empire Zone application made by Oakwood Property Management was in 2004 and pertained to the 43 acre parcel. The application stated that the reason for seeking the designation was to develop commercial properties for lease to other entities. This had nothing to do with expanding Oakwood’s mulch business. Mr. Gilchrist noted that the Affidavit submitted by Brendan Gallivan refers to a second conversation with Supervisor Herrington, this one pertaining to the 26 acre parcel. But only the 43 acre parcel is in an Empire Zone, not the 26 acre parcel.

Mr. Gilchrist stated that credibility was an important issue here. The “writing” that the Gallivans should have obtained from the Town was site plan approval for its expanded operations. Why didn’t they do so?

Supervisor Philip Herrington stated that would have been at the public hearing if he knew that his name was going to come up. What the Gallivans have been saying about him and these conversations is totally untrue. In Sean Gallivan’s affidavit, he states there was a meeting and a conversation about the purchase of the 43 acre parcel in the topsoil office in the middle cow barn at Herrington Farms. The topsoil office is a very small room. There is one chair in that office. He does not do Town business in that office. They have a nice, large office, with tables, chairs and good lighting at the Farm, which they use for meetings. The Gallivans are claiming that he encouraged them to buy the 43 acre parcel. He has been on the Town Board for 22 years. There is no way he would tell someone to spend thousands of dollars on a piece of land just on his say so. What he always does is to direct the person to the appropriate Board or official of the Town to seek the needed approval. He rarely goes to Planning Board or Zoning Board of Appeals meetings. He does not get involved in those proceedings. He does not try to influence those Boards. To be clear, stated Supervisor Herrington, the meeting alleged to have occurred by the Gallivans never happened.

There being nothing further from the parties, Member Trzcinski made a motion to close the public hearing. Member Schmidt seconded. The motion carried 3 - 0.

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

Dated: Brunswick, N.Y.
October 31, 2011

Respectfully submitted,



THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary