

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 17, 2012

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

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The Zoning Board of Appeals opened a workshop meeting at 5:30 p.m. to discuss pending applications. In addition, Mr. Kreiger and Attorney Gilchrist reviewed with the Zoning Board members proposed modification to the application forms for future Zoning Board use. The members will review the proposed changes to the application forms and discuss them at future meetings. The workshop meeting was closed at approximately 6:00 p.m.

Thereupon, Chairman Hannan opened the regular business meeting of the Zoning Board of Appeals. The Zoning Board members paused for a moment of silence to honor the victims of the Sandy Hook Elementary School tragedy in Newtown, Connecticut.

The Zoning Board members then reviewed the draft minutes of the November 19, 2012 meeting. Upon motion of Member Trzcinski, seconded by Member Steinbach, the minutes of the November 19 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Eugene and Joan McCall for property located at 5 Willowbrook Lane. 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, placed on the Town website, and mailed to all adjacent property owners. Chairman

Hannan requested that the Applicant review his proposal with the Board. Eugene McCall explained that he was looking to replace an existing shed with a new wooden shed structure, which will be in the same location as the current shed. This variance is required since the location for the shed requires both a side yard and rear yard setback variance. Mr. McCall explained that he had reviewed this matter with both of his closest neighbors and that both neighbors had no opposition and had already filed letters with the Zoning Board stating that they had no opposition to the requested variances. Chairman Hannan asked whether any of the Zoning Board members had any further questions of Mr. McCall. The members generally stated that all of their questions had been addressed at the November meeting, and that the application seemed reasonable since it sought to replace an existing shed with a new wooden shed in the same location. Chairman Hannan then opened the floor for the receipt of public comment. Don Lambert spoke in support of the application, stating that he also lived in close proximity to Mr. McCall's property, and that he could actually see the shed structure from his property since there was no vegetation between his property and the McCall shed. Mr. Lambert stated that the existing shed is in tough shape, and that he would prefer that the shed be replaced with the new shed structure, and that he had no problem at all with the requested variance. No person spoke in opposition to the requested variance. Hearing no further public comment, Chairman Hannan made a motion to close the public hearing, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing closed on the McCall variance application.

The Zoning Board members then proceeded to review the McCall application materials and public comments in relation to the area variance standards. The Zoning Board members generally concurred that the variance request would not result in an undesirable change in the

character of the neighborhood, nor a detriment to nearby properties, especially given the fact that an existing metal shed had been in that location for over 30 years. The Zoning Board members did find that the shed location could be moved on the McCall lot, but did not find that alternative to be either feasible or reasonable given the fact that the existing metal shed structure had been in the same location for over 30 years. The Zoning Board members generally concurred that the variance request was not substantial, and would be consistent with the past use of the property for the past 30 years. The Zoning Board members also concurred that there would not be an adverse effect on the physical or environmental conditions in the neighborhood, again noting that a metal shed had been in the same location for the past 30 years. The Zoning Board members also found that the need for the variance was not self created, since a shed structure had been in that same location for over 30 years, and that the Applicant merely sought to replace the existing shed structure to its disrepair and age, and to replace it with a new wood shed structure. This action is a Type II action pursuant to the State Environmental Quality Review Act (SEQRA), and no further SEQRA review is required. Chairman Hannan then entertained a motion made by Member Schmidt to approve the area variance request submitted by Eugene and Joan McCall without any conditions, which motion was seconded by Member Trzcinski. The motion was unanimously approved, and the area variance application granted on the McCall application.

The next item of business on the agenda was the area variance application submitted by Eric Smith for property located on 7 Kemp Avenue. 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, placed on the Town website, and mailed to all adjacent property owners. Chairman Hannan requested the Applicant to review the proposal with the Zoning Board members. Eric Smith was present, and stated that

he was seeking to install an in-ground pool in his backyard, which would allow for greater privacy as well as locating the pool in an area where there would not need to be any tree or vegetation removal. Mr. Smith stated that the pool could be easily fenced in in the backyard, and that the pool in the backyard would allow the Smiths to use their side yard for recreation purposes and open space for their children. Chairman Hannan inquired whether the Zoning Board members had any further questions regarding the application. Members Trzcinski, Steinbach, and Schmidt stated that all of their questions had been addressed at the November meeting. Member Casey asked whether an existing deck to the rear of the house needed to be removed in order to install the pool in the backyard. Mr. Schmidt stated that the deck would need to be removed. Member Casey noted that the pool would be only 6' off the rear of the house, and about 6' off the rear property line, and did raise a concern regarding safety. Member Casey noted that there had been an above-ground pool located on the property previously. Mr. Smith confirmed that there had been an above-ground pool located on the property previously, which had been on the lot when the Smiths purchased the home. Chairman Hannan then opened the floor for the receipt of public comment. No member of the public presented any comment. Thereupon, Member Schmidt made a motion to close the public hearing on the Smith area variance application, which motion was seconded by Member Casey. The motion was unanimously approved, and the public hearing closed on the Smith area variance application.

Thereupon, the Zoning Board members reviewed the Smith area variance application materials in relation to the standards for area variances. Zoning Board Members Hannan, Trzcinski, Steinbach, and Schmidt generally found that the application will not result in an undesirable change in the character of the neighborhood nor be a detriment to nearby properties, although Member Casey did state that he felt this application would produce a change in the

character of the area due to the pool's close proximity to the house and the rear property line. On the issue of whether the Applicant could achieve the benefit of installing an in-ground pool by some other feasible method other than the area variance, the Zoning Board members generally found that a viable and reasonable alternative did exist, specifically the ability to locate the in-ground pool in the side yard and meet all applicable side yard setbacks. Member Steinbach did say that privacy is a factor to consider, and that the Applicant was seeking to locate the pool in the rear of the home for privacy purposes, but did concur that it was feasible to install the pool in the side yard. The Zoning Board members also generally concurred that the requested variance was substantial, requesting a reduction in the applicable 20' rear yard setback to only a 5' rear yard setback. Member Schmidt did note that there was no other feasible position for the in-ground pool in the rear yard other than the proposed location, but again noted that the pool could be moved to the side yard and meet all applicable setbacks. The Zoning Board members generally concurred that the requested variance would not have an adverse effect on the physical or environmental conditions in the neighborhood. However, the Zoning Board members did concur that the difficulty is self created, since the Applicant could locate the in-ground pool in the side yard and meet all setback requirements, rather than locating the pool in the rear yard necessitating a rear yard setback variance. Member Steinbach did note that this factor should be considered, but in his opinion is not determinative given the overall intent of the Applicant to locate the pool in the rear yard for privacy purposes. This matter is a Type II action under SEQRA. Chairman Hannan then requested a motion be made on the application. Member Steinbach made a motion to approve the area variance application by Smith without condition. Chairman Hannan seconded the motion. A role call vote was taken. Member Trzcinski voted no, noting that the pool could be located on the lot in a manner that met all applicable rear and

side yard setback requirements. Member Steinbach voted yes. Member Schmidt and Member Casey voted no. Chairman Hannan noted that the motion failed, and the Zoning Board members generally confirmed that the area variance application is denied. Chairman Hannan stated that the Applicant could revise its proposal, or if the Smith's chose to locate the pool in the side yard, to coordinate with Mr. Kreiger on exact location and building permit requirements.

The next item of business on the agenda was the area variance application submitted by Eleanor Montiel-Ochoa for property located at 520 McChesney Avenue Extension. The Zoning Board opened a public hearing on this area variance 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, placed on the Town website, and mailed to all adjacent property owners. Chairman Hannan requested that the Applicant review the proposal with the Zoning Board members. Eleanor Montiel-Ochoa was present, and stated that she and her husband sought to construct a barn on the site for purposes of storage of material. Ms. Montiel-Ochoa stated that they had looked at all possible locations on their lot, but that the only available buildable area on the lot was the location of the existing house and garage, and that the proposed barn location was the only remaining flat, buildable area on the lot. Ms. Montiel-Ochoa explained that the remainder of the lot included a substantial bank down to the creek, which limited the area where they could build on the lot. Ms. Montiel-Ochoa stated that McChesney Avenue Extension was located in the front of the lot, and the Town of Brunswick owned property to the rear of the lot. Ms. Montiel-Ochoa also stated that the existing house and garage were already located closer to McChesney Avenue Extension than the proposed barn structure will be, and that the existing driveway area for the house and garage would also be utilized for access to the barn. Chairman Hannan inquired whether any Zoning Board members had any

questions regarding the application. Member Trzcinski asked whether any customers of her husband's business would be coming to the building. Ms. Montiel-Ochoa stated that customers would not be coming to the barn on a regular basis, and that her husband's company generally does its work on a customer's site, and only works on equipment at the garage location on an intermittent basis. Member Trzcinski wanted to confirm that there was no parking or general customer access requested for the barn location. Ms. Montiel-Ochoa stated that there would be no additional parking or customer access, that the barn was primarily for storage purposes, and that in general there would be no change in the use from what currently occurs at the existing garage on the property. Member Trzcinski asked whether the barn structure could be reduced in size, so as not to be as close to the slope to the rear of the lot. Ms. Montiel-Ochoa stated that they had retained a technical consultant to investigate the soil conditions in the area of the proposed barn structure, and that the report prepared by H2H Associates confirmed that the area of the proposed barn had stable soils, and did not find any condition which would prohibit the construction of the barn in its proposed location. Member Steinbach confirmed that the distance from McChesney Avenue Extension to the front of the proposed barn was approximately 20', and that the existing house and garage were closer to McChesney Avenue Extension than the proposed barn location. Member Steinbach also confirmed that the barn would be used for storage purposes, that it was not proposed to be used generally for customer access, but that on occasion a customer may come to the barn structure to pick up a piece of equipment but that would be an isolated and rare occurrence. Member Steinbach asked whether there would be any opportunity for customers or other invitees to walk around the back of the barn structure in closer proximity to the slope dropping down to the creek. Ms. Montiel-Ochoa and her husband stated that it was not intended for any customer access to the rear of the barn, but that they would be

agreeable to installing a fence if required by the Zoning Board. Member Steinbach asked whether there was any alternative locations on this lot. Ms. Montiel-Ochoa stated that they looked at all viable options on locating the barn on the lot, and that no other locations were feasible. Member Schmidt asked whether there would be any delivery trucks to this site. Ms. Montiel-Ochoa and her husband confirmed that there may be an occasional UPS delivery, but it would be no different than currently exist at the site with the existing garage, and that there was ample room in the front driveway area for a UPS truck to park. The Applicants confirmed that there would not be any increased traffic as a result of the barn construction. Member Casey noted that the existing garage was over 60 years old, and inquired whether the Applicant considered removing the garage structure and provide additional space for the barn construction. The Applicant stated that the garage structure was still in good shape, and that the garage was located in closer proximity to the slope dropping down to the creek than the location of the proposed barn, and that eliminating the garage would actually expose the area closer to the slope than currently exists, and that the existing garage acts as a kind of barrier to the slope. Member Casey stated that removing the garage might also improve sight distance onto McChesney Avenue Extension. The Applicant stated that the proposal was to have vehicles park where they do presently at the site, even for access to the barn. Chairman Hannan stated that he concurred with Member Casey that increased sight distance might be achieved by eliminating the garage, and that this is a tough spot for ingress and egress. Chairman Hannan also inquired as to the status of the Applicant's acquisition of property on White Church Road for purposes of storing materials at the barn located there. The Applicant stated that the transaction for the property on White Church Road still had issues to resolve, and that they now prefer to build on their own property. Ms. Montiel-Ochoa stated that their first proposal was to build on their own property,

but that locating the barn in its proposed location raised issues regarding soil stability which the Applicants would need to have investigated. Ms. Montiel-Ochoa then stated that prior to retaining a technical consultant to investigate the soil stability, a second option was available to purchase property on White Church Road for storing materials. Ms. Montiel-Ochoa explained that when issues arose on the White Church Road property, they decided to move forward and retain a technical consultant to investigate the soil stability issue, and it has now been confirmed that construction of the barn on their property did not present any soil stability issues. It is now their preference to build the barn on their own property. Ms. Montiel-Ochoa wanted to confirm that they were not proposing to modify the area of ingress and egress near the driveway, and they were not proposing any increase in the number of people or customers coming to the property. Chairman Hannan reiterated his concern regarding the steep slope in the rear of the property, and reiterated his opinion that if the garage structure was removed that the site would have better access to McChesney Avenue Extension. Chairman Hannan then opened the floor for receipt of public comment. No members of the public wished to make any comments on the application. Thereupon, Member Trzcinski made a motion to close the public hearing on the area variance application of Montiel-Ochoa, which motion was seconded by Member Casey. The motion was unanimously approved, and the public hearing closed on the Montiel-Ochoa area variance application.

Thereupon, the Zoning Board members discussed the application materials on the area variance application for Montiel-Ochoa with respect to the area variance standards. The Zoning Board members generally concurred that the construction of the barn would not result in an undesirable change in the character of the neighborhood, nor create a detriment to nearby properties. The Zoning Board members did note that the Town of Brunswick owns property to

the rear of this site, but determined that the construction of the barn would not result in a detriment to that parcel. The Zoning Board members also generally confirmed that given the topography of this site, there was no other feasible alternative to locating the barn in its proposed location. The Zoning Board members then found that the requested variance, both in terms of the rear yard and front yard setback requirements, was substantial, but also determined that given the unique characteristic of this lot, there were no other viable options to the barn location. The Zoning Board also considered the technical report submitted by the Applicant from H2H Associates, which concluded that the soils in the area of the proposed barn location were stable and did not present a stability issue with respect to the slope leading down to the creek. The Zoning Board members generally concurred that the requested variance would not have an adverse affect on the physical or environmental conditions in the area, again relying on the H2H Associates report submitted by the Applicant. The Zoning Board members also determined that the difficulty was not self created, given the existing topography of the site and that the parcel in question was unique. Attorney Gilchrist then stated for the record that the Applicant is put on notice that in the event the Zoning Board issues the requested variance, the Town of Brunswick is not confirming or otherwise independently stating that the soil stability and slope stability is adequate in the area of the barn location, but was rather considering the technical report prepared by the Applicant's technical consultant in that regard, and that the property owner is likewise relying on the opinion of its own technical consultant in that regard, and that in the event of any property damage and/or personal injury in the future resulting from slope instability in the area of the barn location the Town of Brunswick is not and will not be responsible or otherwise liable. The Applicant understood this statement and agreed on the record. Thereupon, Attorney Gilchrist confirmed that the requested area variance application was a Type II action under SEQRA, and

that no further SEQRA review was required. Thereupon, Member Trzcinski made a motion to approve the area variance application, but wanted to discuss with the Zoning Board members certain conditions which should be attached to an approval. Member Trzcinski stated that a fence should be required to the rear of the barn structure. The Zoning Board members decided that the exact location and type of fence would be reviewed and coordinated between the Applicant and the Brunswick Building Department. Other conditions discussed by the Zoning Board members included the requirement that any roof drain constructed on the barn needed to be directed away from the slope, and that all existing vegetation between the rear of the barn structure and the top of the slope must be maintained. The Zoning Board members also required that frost walls be required for a foundation to guard against any slab-on-grade moving toward the slope. The Applicant confirmed that he was proposing to include frost walls, and that he was also considering installing a full basement in a portion of the structure. The Zoning Board members also discussed having the Building Department inspect the site on a periodic basis to confirm that all vegetation between the barn structure and the slope is maintained. Member Casey then seconded the motion subject to the conditions discussed. The motion was unanimously approved, and the area variance by Montial-Ochoa granted subject to the following conditions:

1. A fence must be installed between the rear of the barn structure and the top of the slope to the rear of the parcel, with the specific type and location of fence to be coordinated between the Applicant and the Brunswick Building Department.
2. All roof drains installed on the barn structure must be directed away from the slope area in the rear of the site.
3. All existing vegetation between the rear of the barn structure and the top of the slope in the rear of the parcel must be maintained. The Brunswick Building Department will identify the location of all existing vegetation to the rear of the parcel, and will periodically inspect this site for compliance with the requirement that such vegetation be maintained.

4. Frost walls will be required for the foundation of the barn structure.

The next item of business on the agenda was the application for special use permit submitted by Reiser Bros. Inc. for property located at NY Route 2 and NY Route 278. Chairman Hannan noted that he would take one item of new business out of order, and the Zoning Board would thereafter review the proposed written determination for the Reiser Bros. special use permit application.

One item of new business was discussed. An area variance application has been submitted by Mr. and Mrs. David Galluzzo for property located at 390 Brunswick Road. The Applicant seeks to replace and enlarge an existing attached garage to their home, and that a side yard setback variance is sought in connection with the new garage structure. The side yard setback requirement in the R-15 Zoning District is 15', whereas the proposal will result in one corner of the garage being 8' from the side yard line, and the other corner of the garage being 11' from the side yard line. The Applicants were present, together with Matt Rulison of Otterbeck Builders, Inc. Mr. Rulison described the proposal for replacing and enlarging the existing garage structure. Mr. Rulison explained that the home has a unique structural design, and that the replacement of the garage as proposed is necessary to maintain the structural integrity of the entire home, and also primarily to maintain the character of the house by being able to maintain the stone work on the exterior of the home. Mr. Rulison explained that there was no full basement in the house, and that the existing garage was quite small, and the small footprint of the garage did not even allow the owners to park their cars in the garage. Mr. Rulison explained that while the home has a rather large footprint on the overall lot, there is not a large amount of usable space, particularly in the area of the garage. Member Trzcinski asked whether the

existing stonework on the existing garage structure would be maintained. Mr. Rulison stated that the stonework on the garage would need to be removed when the garage was enlarged, but that the design of the enlargement of the garage was made so that the stonework on the remaining home structure could be maintained. Member Steinbach noted that the garage on the Galluzzo home is located on the right of the structure, and asked whether the neighbor located on that side of the lot had any problem with the proposal. Mrs. Galluzzo stated that her neighbor's house was located much deeper in the lot, and that her neighbor did not have any problem with this proposal. Member Schmidt wanted to go to the property to take a look at the house and garage layout, and may have additional questions at the next meeting. Member Casey generally inquired whether the garage could be shifted so that the garage would be deeper into the lot toward the rear rather than extended to the side of the lot, which requires the side yard setback variance. Mr. Rulison explained that due to structural elements in the home, having the garage deeper to the rear of the lot was not a viable option, and that certain buttress elements in the garage structure must be preserved in order to maintain the structural integrity of the home and allow the stonework on the exterior of the existing home to be maintained. Member Casey confirmed with Mr. Kreiger the 8' and 11' setbacks from the side lot line for each corner of the garage, noting that the existing home structure was not set parallel to the lot line. Chairman Hannan asked whether the Zoning Board members could have access to the property to look at the site prior to the January meeting. The Applicant consented, and stated they would coordinate with the Zoning Board members and Mr. Rulison to look at the property. Mr. Rulison inquired whether there was any additional information that the Zoning Board members would like prior to the January meeting, or whether they could do anything on the site to help the Zoning Board members understand the application. Mr. Kreiger stated that it would be helpful if the corners of

the proposed garage extension be staked on the lot so that the Zoning Board members could see that when they visited the property. Mr. Rulison stated that would be completed right away. The Zoning Board members confirmed that the application materials were complete, and that this matter will be set for public hearing at its January meeting.

The Zoning Board members then noted that the date for the January Zoning Board meeting was a federal holiday, and determined to hold the January meeting of the Zoning Board on Tuesday, January 22, 2013. The Zoning Board members also then discussed the date for the February meeting, noting that there were scheduling difficulties for the February 2013 meeting date as well. The Zoning Board members generally confirmed that the meeting of the Zoning Board for February 2013 would be held on Monday, February 25, 2013. Notices of these two special meeting dates for January, 2013 and February, 2013 will be properly published and posted.

The Zoning Board members then addressed the special use permit application by Reiser Bros. Inc. for property located at NY Route 2 and NY Route 278. A draft written determination had been prepared, and distributed to the Zoning Board members subsequent to the deliberation by the Zoning Board members on the application at its open meeting held in November, 2012. The Zoning Board members generally reviewed the determination, including the Findings of Fact and the discussion on the applicable standards for the special use permit consideration, and determined to grant the special use permit application. After discussion of the written decision, Member Trzcinski made a motion to approve the resolution adopting decision on the special use permit application by Reiser Bros. Inc., which motion was seconded by Member Steinbach. The motion was unanimously approved, and the resolution adopting decision was approved, and the special use permit application by Reiser Bros. Inc. is approved and granted. A copy of such

decision is appended to these minutes.

The index for the December 17, 2012 meeting is as follows:

1. McCall – area variance – granted;
2. Smith – area variance – denied;
3. Montiel-Ochoa – area variance – granted with conditions;
4. Reiser Bros. Inc. – special use permit – granted;
5. Galluzzo – area variance – 1/22/13.

The proposed agenda for the January 22, 2013 meeting currently is as follows:

1. Galluzzo – area variance.