

# **Zoning Board of Appeals**

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

## **MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD July 15, 2013**

PRESENT were MARTIN STEINBACH, CHAIRMAN, JAMES HANNAN and E. JOHN SCHMIDT.

ABSENT were CAROLINE TRZCINSKI and MARK BALISTRERI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The draft minutes of the June 17, 2013 meeting were reviewed by the Members of the Zoning Board. Upon motion of Member Hannan, seconded by Member Schmidt, the minutes of the June 17, 2013 meeting were unanimously approved without amendment.

The first item of business on the agenda was the special use permit application submitted by Daniel J. Smith for property located at 899 Hoosick Road. The Applicant seeks the special use permit to convert a residential home into a dental office. The Zoning Board was continuing a public hearing on this application. Member Schmidt immediately inquired of the Applicant as to whether he had installed roof gutters on the residential structure as discussed at the June 17 meeting. Mr. Smith stated that he had installed the roof gutter drain system on July 4, and now the runoff from the roof is being directed away from the adjacent property owned by Brazee. Mr. Smith explained that after installing the roof gutter drainage system, he did need to extend the downspout to insure the runoff drained away from the Brazee property, and that he did install an extended downspout and that the runoff is now draining away from the Brazee property. Member Schmidt inquired whether this drainage system is anticipated to work during all seasons of the year. Mr. Smith then introduced Mark Albert, 160 Winter Street, Troy, New York who has designed a proposed drainage system for the entire lot. Mr. Albert handed up a schematic of

the proposed drainage system for the site. The Applicant proposes to tie in the roof gutters and drainage system to a 6" drainage pipe, which will then be extended to the rear of the property and will discharge to a drywell to be constructed. The drywell is proposed to be 8' x 10' in size, and 4' in depth. Also, Mr. Albert explained that the pitch of the driveway leading back to the parking area will be pitched to direct the surface runoff to a 24" wide, 1' deep drainage ditch which will have a 6" perforated drainage pipe leading to the drywell. Chairman Steinbach inquired whether any of the Board members had any further questions on drainage issues. There were no further questions. Member Schmidt also inquired as to the issue of potable water consumption for the dental office, which was discussed at the June 17 meeting. Mr. Smith stated that he had researched the issue, including information from the United States Geological Survey, U.S. Environmental Protection Agency, and the ECO Dentistry Association, which is affiliated with the American Dental Association. Mr. Smith handed up technical information regarding water consumption, which he generally reviewed with the Zoning Board members. Mr. Smith stated that the typical dental office water usage is approximately 57,000 gallons per year. The typical residential 4-person family annual water usage is 146,000 gallons per year. Mr. Smith stated that the current use of the property is for single family residential, and that the proposed change in use to the dental office will result in approximately 1/3 of the historic water usage at this location. Member Schmidt inquired as to the data for the typical dental office water usage, and the size of the dental office resulting in those figures. Mr. Smith stated that the numbers he quoted were based on a maximum of two dentists, and one dental hygienist. Chairman Steinbach inquired whether there were any further questions from the Zoning Board members on the issue of water consumption. There were no further questions. Chairman Steinbach then inquired about the parking plan for the site, which was also discussed at the June 17 meeting. Mr. Smith introduced Alexis Premmer, 49 Mazoway Avenue, Troy, New York,

who assisted him in preparing the parking plan. Mr. Smith stated that the original parking plan included a total of 14 parking spaces. Upon further research, the standard parking spot size is 9' x 18', and a standard handicap parking spot size is 14' x 18'. Using these dimensions, Mr. Smith is now proposing a total of 13 parking spaces for this site, including a handicap parking space. Mr. Smith stated that Mr. Kreiger confirmed that for a dental office of one dentist and one dental hygienist, a total of 6 parking spaces is required under Town Code, and a dental office of 2 dentists and one dental hygienist requires 11 parking spaces. Therefore, Mr. Smith concluded that even with 2 dentists and one dental hygienist, the proposed parking plan provides more parking than is required under Town Code. Mr. Kreiger confirmed these calculations. Chairman Steinbach inquired whether there were any further questions regarding the parking plan. There were no further questions, and Chairman Steinbach indicated that the proposed parking plan does meet Town Code requirements. Chairman Steinbach then asked whether there were any further questions on any issue associated with this application by the Zoning Board members. There were no further questions. Chairman Steinbach then stated that the Zoning Board would take any additional public comments, before the public hearing was closed. Mike Van de Mark, 909 Hoosick Road, stated that he felt the water consumption data provided by the Applicant was hard to believe, and that he remained concerned about impact of this project upon his well. Mr. Van de Mark also stated that he remained concerned about the entrance driveway to the parking lot, which is single lane only, and felt that this raised a safety issue. Bill Brazee, 901 Hoosick Road, stated that Mr. Smith did address the drainage issue impacting his property through the installation of the roof gutter drainage system, but did note for the record that any further excavation of the site must be done correctly, as he does not want his well or septic affected by this project. Chairman Steinbach asked if there were any further comments from the public. Hearing none, Member Schmidt made a motion to close the public hearing, which motion was

seconded by Member Hannan. The motion was unanimously approved, and the public hearing on the Smith special use permit application was closed. The Zoning Board members then proceeded with deliberation on the application. First, the Zoning Board members reviewed the special use permit criteria in relation to the application information. The first criteria reviewed was whether the proposed special use is reasonably necessary for the public health or general interest or welfare. The Zoning Board members found that the location of a dental office at this location would provide a community benefit, and would also be in keeping with the conversion of existing structures along the Hoosick Road corridor to professional or commercial offices. Mr. Smith stated that it would likely be a period of 8-12 months before a specific dentist would be opening an office at this location, but that this would provide a benefit to the community. The second criteria reviewed by the Zoning Board was whether the proposed special use is appropriately located with respect to transportation facilities, water supply, fire and police protection, and other similar facilities. The Zoning Board members found that this location on Hoosick Road provides adequate transportation facilities, and that the existing driveway provided adequate ingress and egress for this use. The Zoning Board members found that adequate data had been submitted on this application concerning water supply requirements, and the Zoning Board members found that the projected water consumption was less than a residential use. The Zoning Board members also found adequate fire and police protection in the immediate vicinity, both with respect to the Center Brunswick Fire Department as well as the New York State Police. The next criteria reviewed was whether the proposed use provided for adequate parking spaces to handle expected public attendance. The Zoning Board members found that the proposal for 13 parking spaces as discussed at this meeting met both Town Code requirements and provided a reasonable and adequate parking plan. The next criteria reviewed was whether the proposed special use provided for reasonable safeguards for neighborhood

character and surrounding property values. The Zoning Board members found that the exterior of the existing home would not be changed, and would remain consistent with the existing character of the area, and there was no evidence that this use would negatively impact property values. Also, the Applicant is proposing to install a fence consistent with a residential look to shield the rear parking area. The Zoning Board members found this was also consistent with the existing character of the area. The final criteria reviewed by the Zoning Board was whether the requested special use would cause undue traffic congestion or create a traffic hazard. The Zoning Board members generally found that the number of trips to and from a dental office are limited and staggered throughout the day, and that this proposed use would not create an undue traffic congestion issue. The Zoning Board also noted that there was adequate area to turn vehicles around in the parking lot so that there would be no backing out onto Hoosick Road. The Zoning Board members thus completed the deliberation on the special permit criteria. The Zoning Board members determined that the information in the record, considering public comment and responses by the Applicant, was complete for purposes of rendering a decision on the application. First, the Zoning Board members addressed compliance with the State Environmental Quality Review Act. The Zoning Board members reviewed the Environmental Assessment Form, and completed Part II. Specifically, the Zoning Board members determined that this action would not result in a significant adverse impact upon air quality, surface or groundwater quality or quantity, noise, traffic patterns, solid waste production, or the potential for erosion, drainage or flooding problems based on the information in the application. Further, the Planning Board found that this proposed action would not have a significant adverse impact on aesthetic, agricultural, archeological, historic, or other natural or cultural resources, or negatively impair community or neighborhood character. The Zoning Board further found that this action would not conflict with the community's existing plans or goals as officially adopted,

or significantly change the intensity of the use of the land or significantly impair natural resources. The Zoning Board further found that the proposed action would not result in growth, subsequent development, or related activities likely to be induced by the siting of a dental office at this location. The Zoning Board members also determined that this site was not located within, nor would have a significant adverse impact upon, a critical environmental area. After having made these findings, Member Hannan made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Schmidt. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, Member Hannan made a motion to approve the issuance of the special use permit subject to the following conditions:

1. All excavation in connection with the project must be monitored and inspected by the Brunswick Building Department.
2. The drainage system presented at this meeting for the project site must be strictly complied with.
3. The parking plan for this action is predicated upon a maximum of two dentists and one dental hygienist; therefore, given the constraints of the existing structure, a maximum of four rooms are allowed to be used for dental practice so as to comply with the minimum parking space requirements for this location.

Member Schmidt seconded the motion subject to the stated conditions. The motion was unanimously approved, and a special use permit issued subject to the stated conditions, permitting the use of 899 Hoosick Road as a dental office.

The next item of business on the agenda was the area variance application submitted by Dariusz Imbierowicz for property located at 13 Packer Avenue. Mr. Dariusz Imbierowicz was present on the application. Chairman Steinbach inquired whether there were any changes to the application, or any changes to the site since the application had been submitted. Mr. Imbierowicz stated that there are no changes to the proposed area variance request, nor have there been any changes to the site. This was the continuation of a public hearing on this

application. Chairman Steinbach inquired whether there were any members of the public wishing to present comment on this application. Hearing none, and after affording adequate time for comment, Member Schmidt made a motion to close the public hearing, which motion was seconded by Member Hannan. The motion was unanimously approved, and the public hearing on the Imbierowicz area variance application was closed. Member Schmidt then made a statement on the record that this Applicant had failed to comply with Town Code requirements by installing the pool at this location prior to applying for the required area variances. Mr. Imbierowicz replied that he was not aware of the variance requirements, and that he had installed a pool that was similar to the size of pools in his neighborhood, and stated that the pool was consistent with the surrounding properties. Chairman Steinbach stated that the size of the pool was not the issue, but rather Mr. Imbierowicz did not comply with the laws or procedures in the Town Code for the installation of the pool, and had not complied with the setback requirements of the Town Code. However, Chairman Steinbach noted that regardless of the history of this matter, the Zoning Board would address the application on the merits, noting that in the event the application does not meet the criteria for an area variance, Mr. Imbierowicz may be required to take the pool down. Chairman Steinbach inquired whether the Zoning Board members had any further questions or comments. Hearing none, Chairman Steinbach stated that there was adequate information on the application to render a determination at this meeting. Attorney Gilchrist stated that the area variance for residential use is a Type II action under SEQRA, and no further action under SEQRA is required. Thereupon, the Zoning Board members reviewed the criteria for issuance of an area variance. The first criteria reviewed was whether the variances sought would produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties. The Zoning Board members found that, based upon a review of the area, there are a number of pools in this location, and that a pool in this location

would not create a change in the character of the neighborhood or a detriment to nearby properties. In addition, the Zoning Board members did find that the landscaping that had been added to the area of the pool was consistent with the neighborhood. The next criteria reviewed was whether the Applicant could achieve the installation of the pool in some other method, feasible for this location. Chairman Steinbach stated that based upon his review of this property, and based upon the topography of the lot, the location where the pool was installed was the only feasible spot on the lot for the installation of a pool. Member Schmidt noted that even if a smaller pool was installed at this location, given the topography of the site, a variance would still be required. The next criteria considered was whether the area variance is substantial. On this issue, the Zoning Board members found that the rear yard setback variance and the side yard setback variance were not substantial given the topography of the property and the surrounding residential uses. The next criteria reviewed was whether the area variance would have an adverse affect on environmental conditions in the neighborhood. The Zoning Board members found that there would not be any adverse affect on environmental conditions in the neighborhood. The last criteria reviewed was whether the difficulty of meeting the setback requirements was self created. On this criteria, the Zoning Board members found that given the topography of this site, the difficulty was not self created. The Zoning Board members did note that the pool had been installed without the required variances, and that in some respect the issue was self created, but noted that this criteria alone does not preclude the issuance of an area variance. Based upon these deliberations and findings, Member Schmidt made a motion to approve the issuance of the requested area variances, which motion was seconded by Member Hannan. The motion was unanimously approved, and the area variances granted. Attorney Gilchrist noted that given the factual history of this matter, no precedential value should be drawn in terms of seeking approval by the Zoning Board for an after-the-fact approval for

construction of structures or use of property in violation of the Town Code. Chairman Steinbach concurred in this statement, reiterating that no precedential value should be seen in this decision for similarly granting an after-the-fact variance of a violation of Town Code, but that in this case the Zoning Board members reviewed the application on the merits alone and determined that based upon the area variance criteria, the issuance of an area variance was appropriate based on the merits of the application.

The next item of business on the agenda was an area variance application submitted by McDonald's USA, LLC for installation of signs at the McDonald's restaurant located at 780 Hoosick Road in a size and number greater than allowable under Town Code. Chris Boyea of Bohler Engineering was representing the Applicant. Mr. Boyea generally reviewed the redevelopment plan for this location, the site plan for which was approved for the Brunswick Planning Board on May 2, 2013. Mr. Boyea presented the proposal for signage, which includes four wall signs, where only two wall signs are allowed under Town Code, with a total signage square footage of 112.6 square feet, where only 92 square feet for signage at this location is allowable under Town Code. The Zoning Board members generally reviewed the size and location of the proposed signage, reviewing color renderings presented by Mr. Boyea. Mr. Boyea confirmed that there would be no change to the sign along Hoosick Road. Chairman Steinbach inquired of the Zoning Board members as to any questions or comments. The Zoning Board members had no specific questions or comments, noting that the application materials were complete. Chairman Steinbach determined that the public hearing on this application will be held at the August meeting, to be held on August 19 at 6:00 p.m.

One new item of business was discussed.

An application for an area variance has been made by Richard A. Russell, 14 Colehamer Avenue, Tax Map ID# 102.4-12-3. The Applicant seeks an area variance for the installation of a

two car garage to replace an existing 12' x 10' shed. The proposed two car garage is 24' x 28'. The Applicant seeks an area variance for the right side setback, where 15' is required under the Town Code the Applicant is proposing a right side setback of 8' 6". The Applicant also seeks an area variance for the height of the two car garage, where the Town Code allows a 12' accessory structure and the proposed garage is 14' at the roof peak. Mr. Russell stated that he had already talked to his neighbors regarding this project, and that the neighbors have not raised any objection. Mr. Russell explained that the larger two car garage will allow him to store equipment which is currently stored outside of the shed, and would allow him to clean up the look of the property. The application included a number of photographs and aerial photos. The application also includes a plot plan layout and elevations of the proposed garage. The application also included the Environmental Assessment Form. Mr. Russell confirmed that no existing trees would be removed in connection with installing the garage. Mr. Russell confirmed on the record that he consented to the Zoning Board members going to his property to review the site. Chairman Steinbach inquired whether there were any questions or comments on the application. Hearing none, Chairman Steinbach determined that the application materials were complete, and that the public hearing on this application will be held at the August meeting, to be held on August 19 at 6:00 p.m.

The Zoning Board entertained a presentation concerning the proposed amendment to the Duncan Meadows Planned Development District, which is currently pending before the Town Board and which the Town Board has referred to the Zoning Board for review and recommendation. Peter Yetto of Ingalls and Associates presented the proposed amendment to the Duncan Meadows PDD. In attendance with Mr. Yetto were Mr. Peter Amato and Dr. Paren Edwards, who are contract vendees for the phase of the Duncan Meadows PDD project which is the subject of the current proposed amendment. Mr. Yetto explained that the original Duncan

Meadows PDD approval for this particular phase allowed for the construction of 11 buildings to house 88 condominium units. The current proposed amendment seeks to reduce the total number of buildings to 8 buildings, and to have 11 units per building to maintain the total number of units at 88. The current proposal also requests the approval to construct apartment units, rather than the originally approved condominium units. Mr. Yetto presented to the Zoning Board that there were no changes to the project other than the total number of buildings and the change from condominium unit to apartment unit. Mr. Yetto stated that the current proposal is for an 11 unit apartment building including 7 garages per building, with additional surface parking, providing for two parking spaces per apartment unit. Mr. Yetto stated that the road system remains the same, and is compliant with Code requirements. Mr. Yetto stated that the stormwater management plan remained the same. Mr. Yetto also stated that the water and sewer requirements are unchanged. Mr. Yetto also stated that the total number of bedrooms, 176 bedrooms, also remained the same. Mr. Yetto finally stated that the traffic generation and school impacts were unchanged. Mr. Yetto, together with Dr. Edwards, stated that the 11 unit apartment building would be constructed within the same footprint for the original condominium buildings, but that three of the buildings would be removed toward the rear of the project site in an area that contained a significant amount of rock. Mr. Yetto and Dr. Edwards concluded that the project principally remains unchanged, and would result in more green and open space. Chairman Steinbach stated that the change seems to be limited to the total number of buildings, and also the change from condominium unit ownership to apartment rental units, and that all other environmental issues remain unchanged. Mr. Yetto confirmed that there were no further changes being proposed. Dr. Edwards also confirmed that this would not be a phased project, but all 8 apartment buildings would be built out at once. Chairman Steinbach wanted to confirm that the location where the three buildings were being removed would not be used for any

construction in the future. The Applicants stated that this area would not be used for construction, but would be maintained as open space. Chairman Steinbach inquired whether the Zoning Board members had any further questions or comments. None of the Zoning Board members had any further questions or comments at this time. Chairman Steinbach confirmed that this matter was before the Zoning Board for recommendation, and that this matter will be placed on the August agenda for further consideration.

The Zoning Board also entertained a presentation concerning the Oakwood Property Management Planned Development District proposal, which seeks to redevelop the property located at 215 Oakwood Avenue to apartment use. Chris Boyea of Bohler Engineering, the engineers for this project, presented the concept plan to the Zoning Board members. Attorney Gilchrist noted for the record that while Chairman Steinbach and Member Hannan had previously recused themselves concerning prior industrial operations occurring at 215 Oakwood Avenue, upon change in factual circumstances and change in business relationships since the original determination concerning recusal, and further discussion with Chairman Steinbach and Member Hannan concerning the scope and content of the current apartment project PDD proposal, it is determined that no potential or current conflict of interest exists with respect to Chairman Steinbach and Member Hannan participating in the review and recommendation on the current PDD proposal, and the same will continue to participate. Mr. Boyea generally presented the proposed project, which is a 80± acre Planned Development District seeking approval for construction of residential apartment units. Mr. Boyea explained that the proposal was to work only within the areas previously cleared on the project site, with no additional vegetation to be removed. To the contrary, Mr. Boyea stated that the existing treed and vegetated buffer to the rear of the property would be maintained. Mr. Boyea confirmed that all prior industrial operations, including grinding and storage of mulch and topsoil, will be discontinued in the event

the PDD project is approved. Mr. Boyea explained on the record that the office space and parking area utilized by Oakwood Property Management immediately adjacent to Oakwood Avenue, as well as the existing auto shop located adjacent to the Oakwood Property Management office and Oakwood Avenue, would remain, but there would be no grinder or mulch/topsoil storage at the site. Mr. Boyea explained that a total of 250 to 255 units are being proposed, subject to final design. The proposed buildings would range in size between 8 unit buildings and 12 unit buildings, with larger 14 unit buildings to be constructed in a townhouse style for the parcel formerly housing the greenhouse operations located to the north of the Oakwood Property Management office. Mr. Boyea stated that this project is similar in size and scope to the Stoneledge Apartment project currently being constructed in Troy only a short distance down Oakwood Avenue. The Zoning Board members reviewed the concept plan, but had no specific questions or comments at this time. This matter is placed on the August 19 agenda for further discussion for purposes of preparing its recommendation to the Town Board.

The index for the July 15, 2013 meeting is as follows:

1. Smith – special use permit – approved with conditions.
2. Imbierowicz – area variance – approved.
3. McDonald’s USA, LLC – sign variance – 8/19/13 (public hearing to commence).
4. Russell – area variance – 8/19/13 (public hearing to commence).
5. PE & PA Associates, Inc. – Duncan Meadows Planned Development District Phase I Amendment – 8/19/13 (deliberation on recommendation).
6. Oakwood Property Management, LLC – Planned Development District – 8/19/13 (deliberation for recommendation).

The proposed agenda for the August 19, 2013 meeting currently is as follows:

1. McDonald’s USA, LLC – sign variance (public hearing to commence).
2. Russell – area variance (public hearing to commence).

3. PE & PA Associates, Inc. – Duncan Meadows Planned Development District Phase I Amendment (deliberation on recommendation).
4. Oakwood Property Management, LLC – Planned Development District (deliberation on recommendation).