

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD April 21, 2014

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

ABSENT was MARK BALISTRERI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer. Ronald Laberge, P.E., Consulting Engineer on Mulinio Planned Development District amendment application, also present.

The Zoning Board members reviewed the draft minutes of the March 17, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Schmidt, the minutes of the March 17, 2014 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Christian McGrath for property located at 205 Bulson Road. Christian McGrath and Matthew Turner, Esq. were present for the Applicant. Chairman Steinbach inquired of the Applicant as to whether any additional information concerning this matter would be submitted to the Zoning Board for consideration. Attorney Turner stated that Mr. McGrath had met with the adjoining property owner, Mark Cipperly, and that Mr. McGrath had made a certain offer to Mr. Cipperly to address Mr. Cipperly's concerns regarding the proximity of the proposed two-story residential addition in relation to his property line. Attorney Turner stated that Mr. McGrath is waiting to hear a response from Mr. Cipperly. Chairman Steinbach then inquired whether any Zoning Board members had any additional questions for the Applicant. Member Trzcinski asked

whether the proposed residential addition was built on a foundation. Mr. McGrath stated that there was a foundation. Member Trzcinski then inquired as to why Mr. McGrath had not contacted the Building Inspector for the required inspections of the foundation footings before proceeding with framing out the two-story residential addition. Mr. McGrath stated that he really had no answer to this question, and was relying on his contractor. Mr. McGrath did concede that the footings did need to be inspected, and that he failed to contact the Building Inspector for those inspections. Member Trzcinski stated that if the inspections had been requested of the foundation footings, there would have been no further construction on the framing of the two-story residential addition, since the side yard setback issue would have been raised at that time, and the Stop Work Order would have been issued prior to any framing of the structure. The Zoning Board members generally concurred with that comment. Chairman Steinbach inquired of Attorney Gilchrist as to the procedure for rendering a final decision on this area variance application. Attorney Gilchrist stated that the Zoning Board had a statutory period of 62 days in which to render its final decision following the close of the public hearing in this matter. The public hearing on this application was closed on March 17, 2014, and therefore a final decision must be rendered on or before May 18, 2014. Attorney Gilchrist noted that the next business meeting of the Zoning Board is scheduled for May 19, 2014. Attorney Gilchrist stated that the Zoning Board would be required to render its determination at this April 21 meeting, or schedule a special meeting to be held prior to May 18, 2014. Alternatively, Attorney Gilchrist stated that the New York Town Law does provide that the 62 day time period can be extended upon consent of the Applicant. Chairman Steinbach inquired of the Applicant as to whether he would consent to a one-day extension to the May 19 meeting. Mr. McGrath and Attorney Turner both stated that they would consent to extending the statutory timeframe for a

decision on this area variance application through the Zoning Board's May 19, 2014 meeting. Member Schmidt inquired whether any agreement between Mr. McGrath and Mr. Cipperly would affect the Zoning Board's decision. Attorney Gilchrist stated that such an agreement would not directly affect the Zoning Board's decision, since the Board will still need to address and make a determination on each of the statutory elements for consideration of the area variance. However, Attorney Gilchrist did state that if any additional factual information arises as a result of an agreement between Mr. McGrath and Mr. Cipperly, and most particularly with respect to the impact on Mr. Cipperly's property, such additional facts can and should be taken into account by the Zoning Board in rendering its determination. The Zoning Board members generally concurred that the matter should be adjourned to the May 19 meeting to allow further discussions between Mr. McGrath and Mr. Cipperly. Attorney Gilchrist stated that any such discussions are a private matter, and the Zoning Board will not be involved in any such discussions. Upon motion of Member Trzcinski, seconded by Member Schmidt, and upon unanimous adoption of such motion, the area variance application of Christian McGrath is adjourned until the May 19, 2014 meeting.

The second item of business on the agenda was the special use permit application submitted by Stewart's Shops Corporation for property located at Brick Church Road and Tamarac Road. Chris Potter of Stewart's Shops Corporation was present on the application. Chairman Steinbach inquired of Mr. Potter as to whether there were any further updates on this matter for the Zoning Board's consideration. Mr. Potter stated that discussions are ongoing with the Town of Brunswick concerning the waterline issue at this location, and that Stewarts is continuing to work with the Town Water Department. Chairman Steinbach requested an update on those discussions. Mr. Potter stated that Stewarts has offered to extend its service line from

the existing watermain on Brick Church Road to the new Stewarts Shop being proposed as well as to one additional home located on Tamarac Road, but that at that point the Town would continue to extend the service line to hook in three additional homes on Tamarac Road. However, Mr. Potter stated that discussions are ongoing with the Town Water Department. The members of the Zoning Board were of the general opinion that Stewarts should continue extending the service line and Stewarts should connect the three additional homes on Tamarac Road. Chairman Steinbach asked Mr. Kreiger about the zoning compliance issue. Mr. Kreiger reported that he had verified on several Town zoning maps that the business district line does extend onto the parcel so that all proposed commercial uses are within the business district. Mr. Kreiger confirmed that the current proposal by Stewart's Shop for this location is compliant with the Town Zoning District boundary lines. Chairman Steinbach inquired whether any of the Zoning Board members had any further questions or comments on this application. The Zoning Board members had no further questions or comments. Chairman Steinbach confirmed that a negative declaration under SEQRA had been adopted at the March 17, 2014 meeting. Chairman Steinbach did confirm that the negative declaration was adopted as a result of an uncoordinated SEQRA review, and that the Planning Board would also need to make its own SEQRA determination in connection with the pending site plan. Chairman Steinbach inquired whether the Zoning Board was ready to proceed with a determination on the special use permit application. The members concurred that they were ready to proceed to determination. The Zoning Board members then generally reviewed the elements for consideration of special use permits. First, as to whether the proposed special use is consistent with public health, safety and welfare, Chairman Steinbach noted that the proposed upgrade to the Stewarts Shop is promoting the general public interest, it is consistent with the current use at that location, and will actually

result in a better traffic and parking configuration than currently in use. Member Schmidt concurred, stating that he felt the current proposal by Stewarts Shop is an improvement in terms of traffic and parking, and overall safety at that corner. Member Hannan noted that in the general public interest, he felt Stewarts should connect the additional three homes on Tamarac Road to public water, but Member Trzcinski did not concur in that opinion. The Zoning Board members felt, however, that the upgrade to the Stewart Shop does promote general health, safety and welfare. As to whether the proposed special use is appropriately located with respect to transportation facilities, fire and police protection, waste disposal, and other similar facilities, all members generally concurred that all of these issues are already currently being addressed with respect to the current store operations, and that the proposal actually is an improvement with respect to traffic flow and parking. As to whether the proposed special use provides adequate parking to handle expected public attendance, all members generally concurred that the current proposal will improve parking at this location and add needed parking spaces, that the current Stewarts Shop often has congested parking and that the upgrade to this store would help reduce that congestion, and provide an overall safer traffic flow and parking pattern. As to whether the special use provides reasonable safeguards for neighborhood character, Chairman Steinbach noted that this was an existing Stewart's location and that the proposed upgrade will actually improve the store, traffic patterns, and available parking. Member Schmidt noted that the Planning Board will address any increased lighting as a result of the upgraded Stewarts Shop. As to whether the requested special use would cause undue traffic congestion or create a traffic hazard, all members generally concurred that this proposal will actually improve traffic flow and create a safer situation on the corner of Brick Church Road and Tamarac Road. The Zoning Board members confirmed that the location of the gas pumps do comply with all specific zoning

provisions in the Town Zoning Ordinance. The Zoning Board members also concurred that a site plan is required, and that the application for site plan approval remains pending before the Planning Board. After such deliberation, Chairman Steinbach called for a motion to grant the special use permit to Stewart's Shops Corporation. Member Schmidt wanted to note for the record that the issue of the waterline extension to either just one home or extending to three additional homes on Tamarac Road should be considered by the Planning Board in connection with its site plan review. The Zoning Board members generally concurred with that comment. Thereupon, Member Trzcinski made a motion to grant the special use permit for the filling station at this location, which motion was seconded by Member Hannan. The motion was unanimously approved, and the special use permit granted to Stewart's Shop Corporation for this location. Pauline Iwanowicz, 23 Tamarac Road, was present at the meeting and stated on the record that she felt Stewarts should work with the Town and connect the three additional houses on Tamarac Road with a new waterline, as she is the owner of one of those homes and is concerned that her water service will be interrupted if she is not connected to a new service line as a result of this project.

Two items of new business were discussed.

The first item of new business discussed was the application by Dave Mulinio for an amendment to a Planned Development District located off Farrell Road, on which Mr. Mulinio operates a paintball facility. This matter is before the Zoning Board upon referral by the Town Board for recommendation on this application. David Mulinio and Polly Feigenbaum, Esq. were present on the application. Attorney Feigenbaum handed up to the Zoning Board members an updated project narrative, and gave an overview of what the proposed amendment to this PDD entails. Attorney Feigenbaum explained that Mr. Mulinio was proposing to add a few attractions

to the paintball facility during the fall months, and to expand hours of operation. Attorney Feigenbaum stated that Mr. Mulinio had received no complaints from any neighbors during his two years of operation, and that he had met with his neighbors on the current proposal to add attractions and expand hours, and all his neighbors were supportive of the proposal. Attorney Feigenbaum stated that Mr. Mulinio wishes to expand the hours of operation to add Thursday, 5:00 p.m. to 10:00 p.m., Friday and Saturday 5:00 to 11:00 p.m., and Sunday 5:00 p.m. to 9:00 p.m. during the fall season in conjunction with offering an additional paintball attraction. Attorney Feigenbaum generally reviewed the new attraction as a paintball ride through a haunted field. Ms. Feigenbaum also described generally the area for parking, staging, as well as the area where the haunted field would be located at the paintball facility. Mr. Mulinio also explained that the customers would additionally pass through a 2400 square foot movable prop “clown maze” covered with a tent roof. After completing the maze, customers are then directed to a ride line from which they will be loaded onto a 26’ landscape trailer, with attached mounted paintball guns. Each trailer holds 30 people, and will be pulled by a farm tractor through a “haunted field” at approximately 3 miles per hour. Mr. Mulinio confirmed that there will be security throughout the facility, in addition to the operators and he tried to assure safety and control. Mr. Mulinio also explained that once customers are on the ride, they are not allowed off until the ride is completed and returned to the drop off/loading area. Mr. Mulinio anticipates having 4-5 trailers in a continuous rotation. Mr. Mulinio confirmed that no alcohol or smoking is allowed on the grounds, that the facility is patrolled by paid security to assure a safe and controlled location, both for customers as well as neighbors. Mr. Mulinio further explained that to assure safety in conjunction with the “haunted field” attraction, the mounted and non-removable paintball guns attached to the landscape trailer are modified to reduce the speed of paintballs. Mr. Mulinio did

state that there will be additional lighting, provided by portable lights that will be outfitted with appropriate shields for down-lighting. Attorney Feigenbaum also handed up to the Zoning Board members a letter from the underlying property owner, stating that the property owner consents to and supports the modification to the PDD. Mr. Mulinio did confirm that all proposed activities will be conducted within the original footprint for the facility, and no expansion of the facility into the existing wooded areas is proposed. Finally, Attorney Feigenbaum confirmed that a sound analysis is being prepared, and that information will be submitted to the Town for review. Mr. Mulinio concluded by stating that he is trying to add this attraction to enhance the facility, provide safe family amusement, and add jobs to the community. Attorney Feigenbaum noted that Laberge Engineering had been retained by the Town to review the application for engineering comments, that a comment letter had been prepared by Mr. Laberge, and that Mr. Mulinio is working to address all of the engineering comments. Chairman Steinbach asked whether any of the Zoning Board members had questions for the Applicant. Member Trzcinski asked whether any food would be served. Mr. Mulinio stated that food is provided only through vendor trailers. Attorney Feigenbaum stated that there are no permanent structures on the sight serving food. Member Trzcinski stated that she was familiar with corn mazes, but wanted a further explanation as to what the maze for this location would entail. Mr. Mulinio stated that the maze would be located under a 17' high tent, and that the maze actually consists of several removable pieces, and that the maze is actually constructed within a few days and taken down after the end of the fall season together with the tent. Mr. Mulinio confirmed that he is working with a consultant on this proposal, and will have all necessary insurances in place. Chairman Steinbach asked whether any neighbor objected to the proposal. Mr. Mulinio stated that he had spoken with all of his neighbors, and that no one had raised any opposition. Chairman Steinbach

asked Attorney Gilchrist concerning the procedure on this matter. Attorney Gilchrist stated that the application has been made to the Town Board to amend the existing PDD, and that the Town Board has referred the application for recommendation to both the Planning Board and Zoning Board of Appeals. Once the recommendations have been completed by the Zoning Board and Planning Board, the matter would return to the Town Board for a public hearing and consideration of the PDD amendment. Attorney Gilchrist noted that the Applicant had presented the proposal to the Planning Board, and the Planning Board is waiting for the additional information from the sound study to be conducted at this site before rendering its final written recommendation. Chairman Steinbach requested Ron Laberge, P.E. to review his comments. Mr. Laberge stated that he did recommend that a sound study be conducted to assess the additional sound generated from the proposal upon surrounding properties, and that the Applicant will proceed with the sound study. Mr. Laberge also stated that an updated site plan should be provided for the record, specifically identifying the locations where the additional activities will occur. Mr. Laberge stated that his office had looked at traffic and access issues, and determined that adequate access and parking facilities are provided, noting that a traffic light has now been installed at the intersection of Oakwood Avenue and Farrell Road to help further address any traffic flow issues. Mr. Laberge stated that he had reviewed the proposed lighting, and is of the opinion that the lighting will be appropriately shielded for downlighting, and that a vegetative screening exists around the site so that light impacts should not be significant. Mr. Laberge did note that the lights are portable in nature, so that a final location can be determined in the event any light impacts are apparent after the operations are in place. Mr. Laberge did note that an Environmental Assessment Form must be provided on the application. Chairman Steinbach inquired whether the 17' high tent would be visible from surrounding properties. Mr.

Laberge stated that given the existing height of vegetation, it is unlikely that the tent would be visible from surrounding properties. Chairman Steinbach inquired whether any members had any further questions at this time. Chairman Steinbach was of the opinion that the Zoning Board should likewise wait until the sound study has been completed before making any final recommendation. The Zoning Board members concurred. This matter is placed on the May 19 agenda for further discussion.

The second item of new business discussed was an application for a sign permit submitted by Charles Bulson for property located at 1312 Route 7. Mr. Bulson seeks to install a 4'6" x 4'6" square sign at this location in conjunction with a home occupation. Mr. Bulson stated that there would be writing on both sides of the sign, and that the sign would be wood and constructed in a manner to be consistent with the residence. Mr. Kreiger noted that this property is located in a residential district. Mr. Bulson also stated that he would like to have the sign lit at night, and that the lighting would either shine up from the ground or from the top of the frame for the sign. Chairman Steinbach inquired whether the Zoning Board members felt enough information is in the application to deem the application complete and schedule the public hearing. The Zoning Board members generally concurred that the application is complete. Upon motion of Member Hannan, seconded by Member Schmidt, the sign permit application was deemed complete, and a public hearing is scheduled for the May 19, 2014 Zoning Board meeting to commence at 6:00 p.m.

The index for the April 21, 2014 meeting is as follows:

1. McGrath – area variance – 5/19/14.
2. Stewarts Shops Corporation – special use permit – granted.
3. Mulinio – amendment to Planned Development District – 5/19/14.

4. Bulson – sign permit application – 5/19/14 (public hearing to commence at 6:00 p.m.)

The proposed agenda for the May 19, 2014 meeting currently is as follows:

1. Bulson – sign permit application – public hearing to commence at 6:00 p.m.
2. McGrath – area variance.
3. Mulinio – amendment to Planned Development District.