

# **Zoning Board of Appeals**

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

## **MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD May 19, 2014**

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

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The members of the Zoning Board reviewed the draft minutes of the April 21, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the minutes of the April 21, 2014 meeting were unanimously approved without amendment.

The Zoning Board then opened the public hearing on the application by Charles Bulson for installation of a sign at property located at 1312 Route 7. The Notice of Public Hearing was read into the record, noting that the public hearing notice was published in the Troy Record, placed on the sign board, posted on the Town website, and mailed to owners of all adjacent properties. The Zoning Board Chairman requested Mr. Bulson to present an overview of the proposal. Mr. Bulson stated that he was seeking to install a 4' 6" x 4' 6" square commercial sign with lighting on 1312 Route 7. 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 residential area. Mr. Bulson had provided the Zoning Board members with specifications for lighting on the sign, with a proposal for a 12" angle shade gooseneck lighting fixture which will be down lighting from the top of the sign. The Zoning Board Chairman then opened the floor for the receipt of public comment. There were no members of the public wishing to comment on the application. The Chairman asked whether the Zoning Board members had any further questions

of the Applicant. Member Trzcinski asked whether there would be a timer put on the light for the sign. Mr. Bulson stated that there would be a photocell, so that the light would be off during the day, but would come on at night. Member Trzcinski asked whether there would be any shutoff during the night, or whether the light would shine all night. Mr. Bulson stated that he was seeking to have the light shine all night, but could put on a timer on the light if the Zoning Board members required this. Member Trzcinski inquired of Mr. Kreiger as to whether the Brunswick Town Code included any requirements for sign lighting. Mr. Kreiger stated that Town Code does not have any provisions regarding sign lighting. Member Hannan thought that the lighting issue was not material, since this was a relatively small sign. Member Trzcinski then inquired whether the commercial business was operated out of the residence or at other locations. Mr. Bulson stated that his business is principally construction manager and consultant to construction projects, and that he does work out of his residence at this location. Mr. Kreiger had previously determined that such use is a home occupation pursuant to the Brunswick Town Code. Chairman Steinbach inquired whether any of the remaining Board members had any questions or comments. Hearing none, the Zoning Board closed the public hearing on the sign application submitted by Charles Bulson. Attorney Gilchrist then reviewed the legal standard to be considered by the Zoning Board in connection with the consideration of the sign application. The Zoning Board generally determined that the installation of this sign was a reasonable use for this location, and was not otherwise injurious to neighborhood character or otherwise detrimental to public welfare. Following such deliberation, Chairman Steinbach entertained a motion pursuant to SEQRA. Member Schmidt made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Hannan. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, Member Schmidt made a

motion to approve the sign application for 1312 Route 7, which motion was seconded by Member Balistreri. The motion was unanimously approved, and the sign application submitted by Charles Bulson for property at 1312 Route 7 was approved.

The second item of business on the agenda was the continued deliberation and determination on the area variance application submitted by Christian McGrath for property located at 205 Bulson Road. The Zoning Board generally reviewed that this matter had been the subject of several meetings, including a public hearing, that the Zoning Board members had already deliberated on the statutory elements, but that the time in which a determination on the area variance application was extended upon consent of the Applicant to this meeting to be held on May 19, 2014, to allow the Applicant to pursue discussions with the adjoining property owner. Chairman Steinbach inquired of the Applicant as to whether he sought to submit any additional information to the Zoning Board in that regard. Matthew Turner, Esq., representing Christian McGrath, stated that despite several proposals and efforts to address the adjoining property owners' concerns, there were no agreements or resolutions reached with the adjoining property owners, and that his client was looking for the Zoning Board to render its determination on the area variance application. Attorney Gilchrist then reviewed the record, including the application documents and written record before the Zoning Board on this application, and confirmed that the public hearing had been held upon due notice, that the members of the Zoning Board had had the opportunity to review the property in question, that the Zoning Board members had deliberated on the evidence submitted and the legal standards applicable to area variances, and that a draft determination had been prepared for the Board's review and deliberation. Attorney Gilchrist also confirmed on the record that the Zoning Board had previously determined that this application was a Type II action under SEQRA, and no further

SEQRA review or determination was required. Thereupon, Chairman Steinbach reviewed the following provisions of the analysis of the statutory elements for area variance in light of the evidentiary record:

1. The Zoning Board of Appeals determines that the requested area variance will not result in an undesirable change in the character of the neighborhood, since both agricultural and residential uses exist in this general vicinity, but will create a potential detriment to nearby properties with respect to existing agricultural uses on the adjacent property located immediately to the east of 205 Bulson Road. In this regard, the Zoning Board members determine that having a residential structure within 5' of a property line would impact the ability of the adjacent property owner to continue using the property for agricultural purposes, with particular regard to having heavy farm equipment operating within 5' of a residential structure and also the application of fertilizers within 5' of a residential structure. The Zoning Board finds that allowing a residential structure to be located within 5' of the operation of heavy farm equipment and fertilizer application has the potential to impair the ability of the adjacent property owner to continue agricultural activities at that location. Moreover, while the Zoning Board is cognizant that the current owner of 205 Bulson Road raises no issue regarding these agricultural activities, any subsequent owner of 205 Bulson Road may in fact raise objections regarding the application of fertilizer and/or operation of heavy farm equipment within 5' of a residence.
2. The Zoning Board of Appeals determines that there does not appear to be a feasible alternative for the construction of the 2-story residential addition in a manner consistent with the setback requirements of the Brunswick Zoning Code, without significant financial investment for the relocation of the existing house. The Zoning Board of Appeals does find, however, that the proposed size of the 2-story residential addition could be reduced in size to reduce the total amount of the requested variance from applicable setback provisions.
3. The Zoning Board of Appeals determines that the requested variance is substantial. Under the Brunswick Town Code, a 25' side yard setback is required, whereas the proposed 2-story residential addition in its current location is only 5' from the side yard property line. The Zoning Board of Appeals determines this amount of variance to be substantial.
4. The Zoning Board of Appeals determines that the requested location of the 2-story residential addition does not in and of itself create an impact to the environment, but its proposed location does give rise to a potential environmental issue in terms of the existing adjacent agricultural use. The Zoning Board members determine that given existing agricultural uses, including the use of heavy farm equipment and application of fertilizers, having such existing agricultural uses within 5' of a residential structure may give rise to potential

environmental issues, most particularly noise.

5. The Zoning Board of Appeals determines that the need for the requested area variance is entirely self-created by the Owner. In this regard, the Zoning Board members determined that the Owner was aware of the need to obtain a building permit for any additions to 205 Bulson Road, especially in light of the fact that the Owner had previously received a building permit for the installation of a pool at that location. The Zoning Board members find that the rationale for proceeding with construction of the wood deck and 2-story residential addition under the contractor's mistaken belief that the existing building permit, which was obtained for the installation of a swimming pool, also covered the construction of a wood deck and 2-story residential addition, to be unpersuasive and not credible. The record supports the conclusion that the Owner was aware of the need to obtain a building permit for the installation of a swimming pool, and accordingly was, or should have been, aware that a building permit would be needed for the construction of a 2-story residential addition at this property. There is nothing in the record to support the conclusion that this lot is unique in any way.

Chairman Steinbach then inquired whether of the Zoning Board members had any comments, changes or other amendments to this analysis. The Zoning Board members concurred with the analysis of the legal standards and evidentiary record as reviewed. Chairman Steinbach then reviewed the proposed determination on the application, which provided that based on the Findings of Fact and Analysis as reviewed by the Zoning Board members, and upon review of the evidence in the record and all comments received during the public hearing, and in balancing the benefit to the Applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood, the Zoning Board of Appeals denies the requested area variance in this matter. The Zoning Board members unanimously concurred that such determination should be adopted. Thereupon, Chairman Steinbach stated that he would entertain a motion to adopt the proposed written decision on the McGrath area variance application, as reviewed by the Zoning Board members, as the final written determination concerning this application. Member Schmidt made a motion to adopt the written decision on the McGrath area variance application as reviewed by the Zoning Board of Appeals, which

motion was seconded by Member Hannan. The motion was unanimously approved, and the area variance application submitted by McGrath for property located at 205 Bulson Road was denied, as follows:

TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS

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In the Matter of the Application for  
Area Variance submitted by

CHRISTIAN MCGRATH,

Applicant,

DECISION

Application No. ZB2014-0048

For Property Located at 205 Bulson Road

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An application has been made by Mr. Christian McGrath (hereinafter "Owner") for property located at 205 Bulson Road. The Owner has made the area variance application in connection with the proposed completion of construction of a wood deck and 2-story residential addition to an existing house. The 2-story residential addition has a proposed footprint of 18' x 22'. The commencement of construction of the wood deck and 2-story residential addition was undertaken without the required building permit, and otherwise violates the Town of Brunswick Zoning Code with respect to setback requirements.

In particular, construction of the proposed improvements was commenced by the Owner so that the location of the proposed 2-story residential addition is 5' from the side yard property line located to the east. The Town of Brunswick Zoning Code requires a minimum 25' side yard setback for this property.

The application for area variance was submitted and initially reviewed by the Brunswick Zoning Board of Appeals at its meeting held February 24, 2014. Thereafter, a public hearing regarding this application was held by the Zoning Board of Appeals at its meeting held March 17, 2014. At that public hearing the owners of the adjacent parcel located to the east of 205 Bulson Road spoke in opposition to the area variance application, specifically raising concerns regarding impact to property value, impact to future use of the property for residential purposes, impact to current agricultural activities, also noting that the current situation was entirely self-created by Mr. McGrath. The public hearing was closed by the Zoning Board of Appeals at its meeting held March 17, 2014. The Owner was allowed an opportunity to respond to public comments.

The members of the Zoning Board of Appeals deliberated on this application at meetings held March 17, 2014 and April 21, 2014. The Zoning Board of Appeals members also had the opportunity to review the property in question.

At the meeting of the Zoning Board of Appeals held April 21, 2014, the Owner stated that it was in communication with the owner of the adjacent property to the east in an effort to address his concerns. While the Zoning Board of Appeals was not in opposition to allowing such communications to continue in an effort to resolve issues, it informed the Owner that the time in which a final decision on this application must be made would expire prior to the Board's May 19, 2014 meeting, and therefore the Zoning Board of Appeals would need to act at its April 21, 2014 meeting unless such time was extended by consent of the Owner. Thereupon, on the record, the Owner consented to extend the time in which the Zoning Board of Appeals must make a determination on this application through and including the Zoning Board of Appeals meeting on May 19, 2014.

The Zoning Board of Appeals further deliberated on this matter at its meeting held May 19, 2014. The Zoning Board of Appeals confirmed that the record before the Board on this application, which has been reviewed and duly considered by the Board, is as follows:

1. Application dated February 21, 2014.
2. Correspondence of Attorney Matthew Turner, Esq. dated February 21, 2014.
3. Correspondence of Attorney Matthew Turner, Esq. dated March 14, 2014, with attached exhibits:
  - A. aerial photograph;
  - B. receipt for building permit issued by Town of Brunswick Building Department for installation of swimming pool;
  - C. aerial photograph; and
  - D. series of photographs.
4. Survey Map, 205 Bulson Road, prepared by Cornerstone Surveying & Mapping, dated 1/30/2014.

Based upon the deliberations held by the Zoning Board of Appeals members, and observation of the property in question, and consideration of the application record, the following findings of fact and determinations are made:

#### FACT FINDINGS

Based on the record and deliberations of the Zoning Board members, the Zoning Board of Appeals makes the following findings of fact:

1. The Owner commenced construction of a wood deck and 2-story residential addition, with a footprint of 18' x 22', at property located at 205 Bulson Road.

2. The 2-story residential addition is located 5' from the right side yard property line, located on the eastern side of the lot.
3. The parcel located at 205 Bulson Road is located in the A-40 Zoning District pursuant to the Brunswick Zoning Code and Zoning Map.
4. The adjacent property located immediately to the east is also situated in the A-40 Zoning District pursuant to the Brunswick Zoning Code and Zoning Map, and is currently used for agricultural purposes with no current existing structures.
5. The construction of the wood deck and 2-story residential addition at 205 Bulson Road was commenced by the Owner without first obtaining the required building permit from the Town of Brunswick Building Department.
6. The Owner had commenced construction of the wood deck and 2-story residential addition in or about October 2013. The Owner failed to contact the Brunswick Building Department for inspection of the foundation which was installed for the residential addition, nor for any further inspections of subsequent construction.
7. The Owner had previously obtained a building permit from the Town of Brunswick Building Department for the installation of a swimming pool at 205 Bulson Road.
8. The contractor retained by the Owner for the construction of the wood deck and 2-story residential addition stated that he was aware a building permit had been issued to the Owner from the Brunswick Building Department, but further stated that he was under the impression that such building permit covered the construction of the wood deck and 2-story residential addition at issue on this appeal.
9. A Stop Work Order was issued by the Town of Brunswick Building Department concerning the construction of the wood deck and 2-story residential addition at issue on this appeal.
10. A survey was completed for the subject property confirming that the 2-story residential addition is located 5' from the eastern side yard property line.
11. The Brunswick Zoning Code requires a side yard setback of 25' in the A-40 Zoning District.
12. Pursuant to the Brunswick Zoning Code, the permitted uses in the A-40 Zoning District include farms and also private, single-family dwellings.
13. The cost of relocating the house on the lot located at 205 Bulson Road so that the proposed 2-story residential addition complies with the required setbacks for the

A-40 Zoning District has been estimated by the Owner at approximately \$52,000.

14. The owners of the adjacent property located immediately to the east are currently using such property for agricultural purposes.
15. The owners of the adjacent property located immediately to the east also own property directly on the opposite side of Bulson Road, on which is located their residence.
16. The owners of the adjacent property located immediately to the east have stated that they reserve the right to construct homes on such property in the future.

### ANALYSIS

6. The Zoning Board of Appeals determines that the requested area variance will not result in an undesirable change in the character of the neighborhood, since both agricultural and residential uses exist in this general vicinity, but will create a potential detriment to nearby properties with respect to existing agricultural uses on the adjacent property located immediately to the east of 205 Bulson Road. In this regard, the Zoning Board members determine that having a residential structure within 5' of a property line would impact the ability of the adjacent property owner to continue using the property for agricultural purposes, with particular regard to having heavy farm equipment operating within 5' of a residential structure and also the application of fertilizers within 5' of a residential structure. The Zoning Board finds that allowing a residential structure to be located within 5' of the operation of heavy farm equipment and fertilizer application has the potential to impair the ability of the adjacent property owner to continue agricultural activities at that location. Moreover, while the Zoning Board is cognizant that the current owner of 205 Bulson Road raises no issue regarding these agricultural activities, any subsequent owner of 205 Bulson Road may in fact raise objections regarding the application of fertilizer and/or operation of heavy farm equipment within 5' of a residence.
7. The Zoning Board of Appeals determines that there does not appear to be a feasible alternative for the construction of the 2-story residential addition in a manner consistent with the setback requirements of the Brunswick Zoning Code, without significant financial investment for the relocation of the existing house. The Zoning Board of Appeals does find, however, that the proposed size of the 2-story residential addition could be reduced in size to reduce the total amount of the requested variance from applicable setback provisions.
8. The Zoning Board of Appeals determines that the requested variance is substantial. Under the Brunswick Town Code, a 25' side yard setback is required, whereas the proposed 2-story residential addition in its current location is only 5' from the side yard property line. The Zoning Board of Appeals determines this amount of variance to be substantial.

9. The Zoning Board of Appeals determines that the requested location of the 2-story residential addition does not in and of itself create an impact to the environment, but its proposed location does give rise to a potential environmental issue in terms of the existing adjacent agricultural use. The Zoning Board members determine that given existing agricultural uses, including the use of heavy farm equipment and application of fertilizers, having such existing agricultural uses within 5' of a residential structure may give rise to potential environmental issues, most particularly noise.
10. The Zoning Board of Appeals determines that the need for the requested area variance is entirely self-created by the Owner. In this regard, the Zoning Board members determined that the Owner was aware of the need to obtain a building permit for any additions to 205 Bulson Road, especially in light of the fact that the Owner had previously received a building permit for the installation of a pool at that location. The Zoning Board members find that the rationale for proceeding with construction of the wood deck and 2-story residential addition under the contractor's mistaken belief that the existing building permit, which was obtained for the installation of a swimming pool, also covered the construction of a wood deck and 2-story residential addition, to be unpersuasive and not credible. The record supports the conclusion that the Owner was aware of the need to obtain a building permit for the installation of a swimming pool, and accordingly was, or should have been, aware that a building permit would be needed for the construction of a 2-story residential addition at this property. There is nothing in the record to support the conclusion that this lot is unique in any way.

#### DETERMINATION

Based on the findings of fact and analysis stated above, and upon the review of the evidence in the record and all comments received during the public hearing, and in balancing the benefit to the Applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood by such grant, the Zoning Board of Appeals hereby denies the requested area variance in this matter.

The next item of business on the agenda was the application submitted by David Mulinio for amendment to a Planned Development District. This matter is before the Zoning Board of Appeals on referral from the Town Board for recommendation. David Mulinio was present, and updated the Zoning Board on the sound study which had been completed at the property for projected noise from the proposed amendment to the PDD. Mr. Mulinio explained that Sterling Environmental Engineering had been retained to assess noise impacts, and that the Sterling

Letter Report had been reviewed by Laberge Engineering, the Town's Consulting Engineer on the review of the PDD amendment application, and that Laberge had confirmed that based upon the noise assessment, there were no significant offsite noise impacts associated with the proposed PDD amendment. Attorney Gilchrist stated that the Brunswick Planning Board had completed its review and written recommendation on the PDD amendment, and that copies of the Planning Board recommendation had been provided to the Zoning Board members. Chairman Steinbach inquired whether any members had any questions or comments for the Applicant. Members Hannan, Schmidt, and Trzcinski stated that the information was adequate and that they had no questions. Member Balistreri asked Mr. Mulinio about the projected number of customers, and whether the parking at the site was adequate to handle 300-700 potential customers. Mr. Mulinio reviewed the site plan with Member Balistreri, showing the limits of the existing parking area and outlining the capacity of the parking lot. Member Hannan then questioned whether Mr. Mulinio would have staff to direct traffic and parking. Mr. Mulinio stated that he will have 50-60 employees for each of the 5 weekends for the seasonal activities that he is seeking through the PDD amendment, which will include adequate employees for traffic flow and parking. Member Balistreri inquired whether Mr. Mulinio would have adequate emergency services on staff for that number of expected customers. Mr. Mulinio stated that he will have both law enforcement and EMS onsite during these seasonal activities he is seeking through the PDD amendment. The Zoning Board members generally reviewed the written recommendation of the Planning Board, and concurred with the Planning Board's findings and recommendation. The Zoning Board members would like to add the additional recommendation that the owner require onsite law enforcement and emergency services during the Fall seasonal activities, and also have an

employee dedicated for traffic flow and parking. The Zoning Board will have a written recommendation prepared for review at its June 16 meeting.

Two items of new business were discussed.

The first item of new business discussed was the proposed amendment to the Duncan Meadows Planned Development District. This matter is before the Zoning Board of Appeals upon referral by the Town Board seeking a recommendation on the proposed PDD amendment. Peter Yetto, P.E. and Peter Amato were present. Mr. Amato stated that the legal entity seeking to acquire title to this last phase of the Duncan Meadows PDD is BPP2, LLC. Mr. Yetto presented the concept plan for the proposed amendment, which addresses the last construction phase of the project. Mr. Yetto explained that the current approval provides for 78 townhouse – style condominiums, both above and below the existing ROUSE facility. The proposed amendment is to allow the construction of 77 apartment units in the area above the ROUSE facility and adjacent to the 50-unit apartment building which is nearing construction completion, and leave the lower field below the ROUSE facility as greenspace. Mr. Amato explained that while the current approval allows for 78 units, his company proposes to construct the same type of apartment building which is being constructed during the second phase of the Duncan Meadows PDD, which provides for 11 units per building. Mr. Amato explained that he is seeking approval to construct 7 buildings, 11 units per building, in the same general footprint of the proposed layout of the condominium buildings above the ROUSE facility and adjacent to the 50-unit apartment building nearing construction completion. Mr. Yetto continued by stating that there would still be 2 parking spaces per unit provided, that the water and sewer demand would not substantially change, that the projected traffic would not substantially change, and that impacts to school district would not substantially change. Mr. Yetto did explain that there would

be a slight increase in impervious surfaces and therefore the Stormwater Pollution Prevention Plan would need to be amended. Member Balistreri inquired whether the private road for this section of the Duncan Meadows PDD would connect in any way to the Country Way Road which is part of the ROUSE project. Mr. Yetto stated that there would be no connection to the Country Way Road. Mr. Yetto also explained that the original plan for sewer had included a pump station, which was required for the lower field, since the lower field was at a lower elevation and required the pumping of the wastewater to the BSD #6 pump station. Mr. Yetto explained that with the proposal to eliminate the units in the lower field, and construct units only in the upper field adjacent to the 50-unit apartment building where construction is being completed, all wastewater flow will be by gravity without the need for a pump station. Member Balistreri asked whether the project included fire hydrants. Mr. Yetto stated that the fire hydrants are included in the project design and meet all Fire Code requirements. The Zoning Board members concurred that they would like to review the concept site plan being prepared by Mr. Yetto, as well as having a comparison presented as to what is currently approved for this section of the Duncan Meadows project and what is being proposed through the amendment. Also, Mr. Yetto stated that he was completing his summary regarding traffic, water, sewer, school, and drainage issues associated with the proposed amendment, and would be submitting that to the Zoning Board for its review as well. This matter is placed on the June 16 agenda for further discussion.

The second item of new business discussed was an application by Kenneth and Jennifer Colwill for an area variance for the construction of a garage at 46 Spring Landing Boulevard (Parcel ID #113.4-1-12). The application documents state that the property owner is seeking to convert an existing garage to residential use, and construct a new attached garage. Given the

configuration of the lot, the corner of the new proposed garage will require an area variance for side yard setback, with a 10' side yard setback being proposed where the code requires a 15' side yard setback. Member Hannan made a motion to accept the application as complete and schedule a public hearing for June 16, 2014 at 6:00 p.m., which motion was seconded by Member Balistreri. The motion was unanimously approved, and the area variance application by Colwill was deemed complete and a public hearing has been scheduled for June 16, 2014 commencing at 6:00 p.m.

The index for the May 19, 2014 meeting is as follows:

1. Bulson – sign permit – granted.
2. McGrath – area variance – denied.
3. Mulinio – application to amend Planned Development District – 6/6/14 (recommendation).
4. BPP2, LLC – amendment to Duncan Meadows Planned Development District – 6/16/14 (recommendation).
5. Colwill – area variance – 6/16/14 (public hearing to commence at 6:00 p.m.).

The proposed agenda for the June 16, 2014 meeting currently is as follows:

1. Colwill – area variance – public hearing to commence at 6:00 p.m.
2. Mulinio–proposed amendment to Planned Development District (recommendation).
3. BPP2, LLC – proposed amendment to Duncan Meadows Planned Development District (recommendation).