

# **Zoning Board of Appeals**

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

## **MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD June 16, 2014**

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

ABSENT were JAMES HANNAN and JOHN KREIGER, Code Enforcement Officer.

The Zoning Board members reviewed the draft minutes of the May 19, 2014 meeting. One correction was noted. On page 14 of the draft minutes, under the section pertaining to the index for the May 19 meeting, item #3 should be amended so that the date reads 6/16/2014. Member Trzcinski then made a motion to approve the May 19, 2014 minutes with the noted correction. Member Schmidt seconded the motion. The motion was unanimously adopted, and the May 19, 2014 meeting minutes were approved subject to the noted correction.

The Zoning Board of Appeals then opened the public hearing on the area variance application submitted by Kenneth and Jennifer Colwill for property located at 46 Spring Landing Boulevard (Parcel ID #113.4-1-12). The Notice of Public Hearing was read into the record, and that notice having been published in the Troy Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach then opened the floor for the receipt of public comment on the application. No members of the public wished to submit any comment. Chairman Steinbach then repeated whether anyone in the audience sought to submit any comment either in favor of, or opposed to, the application. No members of the public wished to submit any comment. Thereupon, Chairman Steinbach closed the public hearing on the area variance application submitted by Colwill.

The Zoning Board then proceeded to address the area variance application by Colwill. Kenneth Colwill, 46 Spring Landing Boulevard, was present, and Chairman Steinbach inquired of Mr. Colwill as to whether there were any changes to the area variance application that should be considered by the Zoning Board members. Mr. Colwill stated that there were no changes to the application. The application seeks a sideyard variance for the construction of an attached residential garage. The Brunswick Zoning Ordinance requires a 15-foot sideyard setback, and the Applicant seeks an area variance to allow for a 10-foot sideyard setback. Chairman Steinbach then asked the Zoning Board members whether they had any questions or comments on the application. Member Schmidt noted that the application documents state that the area variance was required because the Applicant could not construct the garage in compliance with the setback requirements due to the location of the septic field for the lot, but that the map submitted in support of the area variance application did not identify the location of the septic field. Member Schmidt requested Mr. Colwill to identify the location of the septic field. Mr. Colwill then identified the location of the septic field on the maps submitted in support of the application, confirming that compliance with the setback requirements would place the proposed garage in conflict with the location of the existing on-site septic field. Member Trzcinski raised a question concerning the notice of the public hearing, and whether any placard had been placed on the property at 46 Spring Landing Boulevard noting that a public hearing would be held. Attorney Gilchrist stated that the New York Town Law and the Brunswick Zoning Ordinance require notification of the public hearing through publication in the official newspaper of the Town, and mailing notices to the parties involved. As a matter of practice, the Zoning Board has been publishing the Notice of Public Hearing in the official newspaper of the Town, placing the notice on the Town sign board, posting the notice on the Town website, and mailing a copy of

the notice of public hearing to all adjacent property owners. The Brunswick Zoning Ordinance does not require that a placard be placed on the subject property. Attorney Gilchrist stated that he will coordinate with Mr. Kreiger as to any past practice of the Zoning Board in this regard. The Zoning Board members had no further questions or comments on the application. Chairman Steinbach then inquired whether the Zoning Board members were ready to proceed with deliberations and action on the application. The Zoning Board members generally concurred that the application was complete and ready for deliberation. Attorney Gilchrist then stated for the record that this application seeks an area variance for a residential use, and therefore constitutes a Type II action pursuant to SEQRA, and no further environmental impact review is required pursuant to SEQRA. Chairman Steinbach then directed the review of the elements to be considered by the Zoning Board regarding the area variance application. Regarding the issue of whether the area variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Schmidt stated that he felt there would be no impact to the character of the neighborhood, given that the proposed garage would simply replace an existing garage that had been converted to residential use, and further that the lot at 46 Spring Landing Boulevard was bordered by vacant land which was not approved for a building lot. The Zoning Board members generally concurred that the area variance would not change the character of the neighborhood or create a detriment to any nearby property. On the issue of whether the benefit sought by the Applicant could be achieved by another feasible method other than the area variance, Member Trzcinski stated that she felt there was no other feasible method to construct the garage, particularly since it would interfere with an existing onsite septic system location. On the issue of whether the area variance is substantial, Chairman Steinbach noted that while a 15-foot side yard setback is required, and the Applicant is

seeking a 5-foot variance to allow the garage to be 10-feet from the side yard line, in this case he did not feel the 5-foot variance was substantial, particularly since there was no homeowner or other structure adjacent to the sideline and that the adjacent property is not approved as a building lot. The remaining Zoning Board members concurred with that opinion. As to the issue of whether the proposed area variance would have an adverse affect on the physical or environmental conditions in the neighborhood, the Zoning Board members generally concurred that there would be no adverse affect on the physical or environmental conditions in the neighborhood, that there were no adjacent neighbors in proximity to the proposed garage and that the property is vacant and not approved as a building lot, and that no residents in the Spring Landing neighborhood objected to the variance. As to the issue of whether the difficulty is self-created, Chairman Steinbach did note that the issue has been self-created since the property owner converted an existing garage into residential use and is proposing to build a new garage requiring the variance, but that such consideration is relevant but does not preclude the variance. Member Schmidt stated that he felt the lot at 46 Spring Landing Boulevard was an odd shape, in the nature of a pie-shaped lot, which in part resulted in the need for the area variance. On the overall issue of balancing the benefit to the Applicant in granting the area variance as opposed to any detriment to the neighborhood, the Zoning Board members generally concurred that there was a benefit to the Applicant but no significant impact to the neighborhood. The Zoning Board members also reiterated that there were no objections from any of the Spring Landing neighbors. In light of that deliberation, Member Trzcinski then made a motion to grant the area variance to Kenneth and Jennifer Colwill for the proposed garage addition located at 46 Spring Landing Boulevard, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance granted.

The next item of business on the agenda was the referral of the Mulinio Planned Development District amendment application from the Town Board for recommendation. The Zoning Board members had previously deliberated on this matter at its meetings held April 21 and May 19, and had directed that a draft recommendation be prepared for their review at the June 16 meeting. Upon review of the draft recommendation, the Zoning Board members then adopted the following recommendation on the application by David Mulinio to amend the Mulinio Planned Development District:

**WHEREAS**, the Town Board of the Town of Brunswick (“Town Board”) has received an application from David Mulinio (“Applicant”) for an amendment to the Planned Development District (“PDD”) approval that currently allows the operation of a paintball facility on 13.6 acres of land located at the intersection of Oakwood Avenue and Farrell Road; and

**WHEREAS**, the application for an amendment to the PDD seeks approval to expand the hours of operation from the current schedule of only Saturday and Sunday 9:00 a.m. to 5:00 p.m., to add Thursday 5:00 p.m. to 10:00 p.m., Friday and Saturday 5:00 p.m. to 11:00 p.m., and Sunday 5:00 p.m. to 9:00 p.m. during the Fall season each year (beginning on the last Thursday in September through the last Sunday in October) in connection with adding an additional paintball attraction; and

**WHEREAS**, the Town Board has referred the Mulinio PDD amendment application to the Town of Brunswick Planning Board (“Planning Board”) and Town of Brunswick Zoning Board of Appeals (“Zoning Board of Appeals”) for review and recommendation; and

**WHEREAS**, the Applicant presented the proposal to the Zoning Board of Appeals at its meetings held April 21, 2014; May 19, 2014; and June 16, 2014, and discussed the proposed project with the Zoning Board members; and

**WHEREAS**, the Zoning Board members also had the opportunity to review the written recommendation of the Brunswick Planning Board concerning this application, dated May 15, 2014, and generally concur with the Findings and Conclusions of the Brunswick Planning Board; and

**WHEREAS**, the Zoning Board members, upon further deliberation, determined that additional recommendations should be made concerning availability of law enforcement and emergency services at the site as well as traffic flow and parking at the site;

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Appeals of the Town of Brunswick in regular session duly convened as follows:

1. The Zoning Board of Appeals generally concurs with the Findings and Conclusions of the Brunswick Planning Board in its written recommendation dated May 15, 2014 concerning this proposed PDD amendment, and incorporates the Findings and Conclusions of the Brunswick Planning Board's May 15, 2014 written recommendation herein.

2. In addition, the Brunswick Zoning Board of Appeals further determines and recommends to the Town Board that it consider the following requirements as conditions to any action: (a) law enforcement and emergency services must be present on site during the Fall seasonal activities, and (b) an employee must be dedicated to traffic flow and parking during the Fall seasonal activities to address projected additional customers.

The third item of business on the agenda was the application submitted by BPP II, LLC for a third amendment to the Duncan Meadows Planned Development District. Peter Amato and Dr. Paren Edwards of BPP II, LLC were present, together with their consulting engineer, Peter Yetto, P.E. Also in attendance was Mark Kestner, P.E., the Town consulting and review engineer on the Duncan Meadows PDD amendment application. Mr. Yetto provided an overview of the additional information that had been submitted on this application, including a site plan and supplemental environmental impact information to supplement the prior EIS which had been prepared for this project. Member Trzcinski then asked about the use of the field located below the existing ROUSE facility, which Mr. Yetto was referring to as the "Phase 3" area of the project. Mr. Yetto stated that BPP II, LLC had no plans to develop that property, and was originally proposing to keep that area as open space, but that members of the Town Board and Planning Board thought that the area should not be restricted as open space. Dr. Edwards stated that the Applicant had offered to the Town Board to keep the lower field as forever wild, but that members of the Town Board and Planning Board felt it might be better to keep options open for any potential future use of the lower field. Dr. Edwards reaffirmed that the Applicant has no plans to develop this area, but that if the Town wanted to reserve options for any future development on the lower field, then BPP II, LLC would do whatever the Town wanted.

Attorney Gilchrist noted for the record that while he was not present for the June 5<sup>th</sup> Planning Board meeting, he had been present at the prior Town Board and other Planning Board meetings on this application, and noted that his recollection was that one Town Board had raised a question regarding restricting the future use of this lower field, and that members of the Planning Board merely raised the issue of potential continued agricultural use of the lower field, and not for a future residential/commercial development. Member Trzcinski stated that she felt the current agricultural use should be allowed to continue, and that the field should not be made forever wild, because those areas tend to overgrow with brush. Member Schmidt asked about whether such a restriction on that area could be amended in the future. Attorney Gilchrist generally reviewed the option of restricting the parcel, and that the specific language of any restriction would determine whether it could be amended in the future, and the restriction would also identify the party who could enforce such restrictions and also the party who could amend the terms of the restriction in the future. Attorney Gilchrist did state that with respect to conservation easements, any amendment in the future generally do not allow for a change in the purpose and intent of the restriction, and that future residential/commercial development is generally not allowed as an amendment to a conservation easement. Member Balistreri asked whether the concern of the Town was the upkeep of that lower field in the future if it is restricted as open space. Member Trzcinski said that was her concern, that it would be better use of the land to keep it in agricultural use, and also to keep it on the tax roll. Chairman Steinbach then asked whether the Applicants had any further submissions to make to the Zoning Board for consideration. Hearing none, Chairman Steinbach then asked whether Mr. Kestner had any comments on his review of the application materials for consideration by the Zoning Board members. Mr. Kestner did state that the Planning Board members did raise a question regarding

having the traffic from all of the proposed 77 apartment units utilizing one access road, as opposed to the prior approval which separated that traffic between two access roads. Mr. Kestner also raised the issue regarding the sidewalk/walking area adjacent to McChesney Avenue Extension, and whether that walking area should be extended to the ROUSE facility. Mr. Yetto and Dr. Edwards stated that it was their understanding that prior approvals for this project did not require the sidewalk/walking area to be extended past the existing entrance road to the Duncan Meadows project on the McChesney Avenue Extension. Attorney Gilchrist stated that a review of the original approval for this project, as well as the two approved amendments to this project, will be undertaken. Mr. Kestner also noted that the layout of the internal road was changed from a cul-de-sac to a T-turnaround layout, and that this will need to be reviewed by the Fire Department for emergency access. Mr. Kestner also stated the Planning Board raised the issue of economic effect on the Town by converting the approved use from condominium/townhome to apartment use. Finally, Mr. Kestner did state that the Planning Board raised the issue of the use of the lower field, which has already been discussed by the Zoning Board. Mr. Yetto stated that he had designed the project to provide for access by emergency vehicles, and compliance with applicable fire code provisions. Member Balistreri stated that emergency access was important at these types of facilities, and review by the Fire Department will be required. Mr. Yetto stated that he would coordinate with the Fire Department. Attorney Gilchrist then reviewed procedural status, stating that the Planning Board will be reviewing a draft recommendation at its meeting to be held June 19, and if adopted by the Planning Board at that meeting, the Planning Board's recommendation would be forwarded to the Zoning Board members for their review and consideration. Attorney Gilchrist also stated that the Town Board would ultimately be scheduling the public hearing on this application.

Member Schmidt then stated his opinion that there should be some restriction on the future use of the lower field to not allow any additional residential units, since this project had been reviewed and approved for a total number of units, which were still going to be built but simply located in other areas of the project site, and that if additional residential or other units were allowed in the lower field, then the total number of units for the Duncan Meadows project would exceed the originally-approved 216 units. Member Schmidt felt that the original 216-unit approved density should continue to be the maximum density for this project, wherever the units are ultimately constructed on the project site. This matter has been placed on the July 21 agenda for consideration of the Zoning Board recommendation on this application.

Mr. Kreiger was not present to review any new applications, and therefore no new business was discussed nor placed on the July 21 agenda.

The index for the June 16, 2014 meeting is as follows:

1. Colwill – area variance – granted.
2. Mulinio – amendment to Planned Development District – recommendation adopted.
3. BPP II, LLC – Duncan Meadows Planned Development District amendment – 7/21/14.

The proposed agenda for the July 21, 2014 meeting currently is as follows:

1. BPP II, LLC – Duncan Meadows Planned Development District amendment - recommendation.