

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD September 15, 2014

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

ABSENT was MARTIN STEINBACH, CHAIRMAN.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

Member Balistreri served as Chair for this meeting in the absence of Chairman Steinbach.

The Zoning Board members reviewed the draft minutes of the August 18, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Schmidt, the draft minutes of the August 18, 2014 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by John Mulinio for property located at 21 Cooper Avenue. John Mulinio was present on the application. The Zoning Board members confirmed that the public hearing on the application for area variance was held on August 18, 2014, and that the public hearing was closed on that date. The Zoning Board members began their deliberations on this application at the August 18, 2014 meeting, but the Zoning Board members also wanted the opportunity to do an additional review of the property prior to making any final determination. The Zoning Board members having had the opportunity to further review the property, the Board was prepared to further deliberate on the application at this meeting. The Zoning Board members stated that lot line variances and a height variance are being requested. The Zoning Board inquired whether the application needed to be treated as a whole, or whether the individual variance requests should be addressed

separately by the Zoning Board. Attorney Gilchrist stated that the Zoning Board had the jurisdiction to address each of the requested variances, based upon the proof submitted for each variance as well as the public comments received. The Zoning Board determined that the lot line variances, which include both a side yard variance and rear yard variance, should be treated together, and that the requested height variance should be treated separately. The Zoning Board members then reviewed the elements which are considered in connection with balancing the benefit to the Applicant as compared to the detriment to the surrounding community regarding each requested variance. As to whether the proposed variances will produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Trzcinski felt that the side yard setback and rear yard setback variances would not create a detriment or undesirable change, particularly since a shed had been located in that spot on the property for several years, and that the Applicant had actually moved the shed structure further into the lot to increase the separation from the lot lines. The other Zoning Board members concurred with that opinion. Concerning the requested height variance, Member Schmidt stated that his opinion is the height will create a detriment to nearby property in terms of visual impact, since this proposed structure is 18' whereas the prior shed was only 10' to 12' in height. Member Schmidt also stated that based on his inspection of the property in the surrounding neighborhood, there were no other accessory structures in the neighborhood at the requested 18' in height. Member Schmidt felt that this increased height will create a visual detriment to the surrounding neighborhood and property owners. The remaining Zoning Board members agreed with that opinion. The Zoning Board members then addressed whether the benefit sought by the Applicant could be achieved by some other feasible method, other than the requested variances. As to the side yard and rear yard setback variances, the Zoning Board members generally

concluded that there was not an alternate area for the shed structure on the lot given the existence of a pool in the backyard, and also considered the fact that a shed had been in that general location on this lot for years to be relevant. Concerning the requested height variance, Member Trzcinski stated that there was an alternative available, which was to remove the second floor of this structure and still have a shed for the storage of equipment. Member Trzcinski stated that the use of the proposed second floor as a playhouse could be achieved by building a smaller playhouse somewhere else on the property. The Applicant stated from the audience that if he had to build the playhouse somewhere else on the lot, there would be no back yard area left between the pool, the shed, and the playhouse. As to whether the requested variances are substantial, Member Trzcinski stated that the side yard and rear yard variances were acceptable, but that she feels the requested height variance is substantial. Member Balistreri stated that he felt both the rear yard and side yard setback requests were substantial, but did note that a shed structure had been in that general location for years on this lot. Member Balistreri concurred that the requested height variance is substantial, with a requested 50% increase in the code limit of 12', requesting a total height of 18' being substantial. Member Balistreri also felt it was relevant that the shed structure which had been previously located on this lot was only 10' to 12' in height, and compliant with the Town Code height limits. The remaining Zoning Board members generally concurred with those statements. As to whether the proposed variances would have an adverse effect on the physical or environmental conditions in the neighborhood, the Zoning Board members generally concurred that as to the rear yard and side yard setbacks, there would be no adverse effect on the physical or environmental conditions, but with respect to the height variance, a visual impact is produced. As to whether the difficulty requiring the variances is self-created, Member Trzcinski stated that the rear yard and side yard variance requests may be

viewed as self-created, but felt it was relevant that a shed structure had been located in that general location on the lot for several years. As to the height variance, Member Trzcinski was of the opinion that the height variance was entirely self-created, as the former shed structure was only 10' to 12' in height and compliant with Town Code height requirements. The remaining Zoning Board members concurred with those statements. The Zoning Board members then proceeded to make a determination on the rear yard and side yard setback variance and the height variance requests. Based on the deliberations of the Zoning Board members, Member Trzcinski made a motion to grant the requested side yard and rear yard setback variances, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the side yard and rear yard setback variances were granted. Based on the deliberations of the Zoning Board members, Member Hannan then made a motion to deny the height variance request, as the variance will create an undesirable change to the character of the neighborhood, create a detriment to nearby properties in terms of visual impact, that the requested variance is substantial, and that the requested variance was entirely self-created. Member Balistreri asked Mr. Kreiger about the method the Building Department uses to determine total height of a structure. Mr. Kreiger explained the height determination when a pitched roof is proposed, but that in this case, a flat roof is being proposed, so that the highest point of the roof must be used to determine total height, and that in this case the total height is 18'. Member Trzcinski seconded the motion to deny the area variance for height. The motion was unanimously approved, and the application for a height variance in this matter was denied. The Zoning Board members directed the Applicant to coordinate with the Building Department concerning the implementation of this determination.

The next item of business on the agenda was the application submitted by American Housing Foundation for a three-story, 86-unit age-restricted apartment building proposed for 112 McChesney Avenue. Mr. Kreiger reports that the Applicant has requested this matter be adjourned without date.

The next item of business on the agenda was an area variance application submitted by Keith Duncan for property located at 51 Norfolk Street. Mr. Kreiger reports that the Applicant has requested this matter be adjourned without date, pending a complete application signed by all record owners of the property.

Three items of new business were discussed.

The first item of new business discussed was a sign variance application submitted by Callahan Sign, LLC on behalf of Carbone Auto Group for property located at 800 Hoosick Road. James Callahan was present for the Applicant. Mr. Callahan explained that Carbone Auto Group is seeking to install 6 signs in connection with the new Carbone Subaru dealership at 800 Hoosick Road, including one pylon sign and five wall signs. Mr. Callahan also stated that the Applicant was seeking approval to install a 53" Subaru logo on the building, where Town Code allows only a 36" sign. Mr. Kreiger confirmed that the total square footage of all 6 proposed signs are under the 300 square feet total allowed pursuant to Town Code, and that the variances sought were for the total number of signs and for the size of the Subaru logo. Mr. Kreiger stated that Town Code allows a total of 2 signs for the facility, whereas a total of 6 signs are being proposed. Mr. Kreiger also stated that Town Code allowed a maximum 36" sign, whereas a proposed 53" Subaru logo is being proposed for the building. The Zoning Board members reviewed the application materials, and determined them to be complete. This matter has been scheduled for a public hearing to commence at 6:00 p.m. on October 20, 2014.

The next item of new business discussed was a use variance application by Christine Lozo for property located at 19 Chester Court. The Applicant is proposing to operate a “doggie daycare” and boarding facilities for dogs at this residential location. The Zoning Board members reviewed the general schematic layout included in the application. The Zoning Board members asked the total number of dogs which would be at this location during the day as part of the “doggie daycare”, and how many dogs would be allowed to board overnight at this location. The Applicant stated that up to 20 dogs would be present at this site during the day, and that the facility would be able to board up to 6 dogs at night. The Applicant also stated that the hours of operation for the “doggie daycare” was 7:00 a.m. to 6:00 p.m., Monday through Friday only. The Applicant also stated that she intended to build another building on the lot for this business. Member Hannan asked whether the Applicant had any experience with handling dogs. The Applicant stated that she had experience working at Hudson Mohawk Humane Society, with dog rescue teams, and working with several dog trainers in the area. Attorney Gilchrist noted that the application seeks a use variance, and that upon review of the application materials, no information has been submitted to the Board in terms of economic proof, and specifically on the issue of whether the Applicant is able to obtain a reasonable economic return on this property for the uses allowed in this Zoning District pursuant to the Brunswick Zoning Code. Attorney Gilchrist advised the Board that this economic proof was required, as one of the elements the Board needs to determine is whether the Applicant can realize a reasonable return from the property without the proposed use variance, as demonstrated by competent financial evidence. The Zoning Board members concurred that given this lack of evidence, the application is not complete. The Zoning Board requested that this evidence be submitted by the Applicant, and adjourned this matter until such financial information is submitted to the Zoning Board.

The third item of new business discussed was a special use permit application submitted by Tom Walsh for property located at 513 Farm-to-Market Road. Member Schmidt stated that he is recusing himself from considering this application due to the fact that he is the owner of adjacent property. Member Schmidt then left the Board table. Mr. Walsh was present on the application. Mr. Walsh explained that he is the owner of the property, and that it is currently a two-family structure, and that he is requesting approval to add a third unit so that this will become a three-family structure. Mr. Walsh stated that each of the proposed units would have separate entrances available, and that the septic system on the lot was adequate for three units. Mr. Walsh explained that when he purchased this property, it was a two-family structure, but that he had used the structure as a one-family residence while his children were younger, and then converted the property back to a two-family structure and created an in-law apartment, which is not being used for family purposes anymore but is rather being rented out, and he is now seeking approval to add a third unit to the structure. Mr. Walsh stated that there would be no external structural changes, but that the only renovations would be internal. The Zoning Board members reviewed the application materials, and deemed them complete. This matter has been scheduled for public hearing to commence at 6:15 p.m. on October 20, 2014.

The index for the September 15, 2014 Zoning Board of Appeals meeting is as follows:

1. Mulinio – area variance:
 - a. Side yard setback variance: granted.
 - b. Rear yard setback variance: granted.
 - c. Height variance: denied.
2. American Housing Foundation – special use permit – adjourned without date.
3. Duncan – area variance – adjourned without date.
4. Callahan Sign, LLC – sign variance – 10/20/14 (public hearing to commence at 6:00 p.m.).

5. Lozo – use variance – adjourned without date pending submission of additional information.
6. Walsh – special use permit – 10/20/14 (public hearing to commence at 6:15 p.m.).

The proposed agenda for the October 20, 2014 meeting currently is as follows:

1. Callahan Sign, LLC – sign variance (public hearing to commence at 6:00 p.m.).
2. Walsh – special use permit (public hearing to commence at 6:15 p.m.).