

# **Zoning Board of Appeals**

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

## **MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD November 17, 2014**

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

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

Chairman Steinbach noted for the record that Member Balistreri has been appointed as a member of the Town of Brunswick Town Board, and will no longer be serving as a member of the Brunswick Zoning Board of Appeals. The members of the Zoning Board of Appeals thanked Mr. Balistreri for his service as a member of the Zoning Board of Appeals, and wished him well in his new position as a member of the Brunswick Town Board. Attorney Gilchrist advised the Board that until such time as the Brunswick Town Board appoints someone to fill the fifth membership position on the Zoning Board of Appeals, the Board will act as a four member board, which presents the potential issue of a split vote, or a 2-2 vote on any given application. Attorney Gilchrist further advised the Zoning Board that a vote of the majority of the Board membership is still required in order to approve any application or, in other words, a vote of three members in favor must still be achieved in order to approve any application, even though there are only currently four members sitting on the board. Chairman Steinbach noted these issues.

The Zoning Board members reviewed the draft minutes of the October 20, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the draft minutes of the October 20, 2014 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by David Kent for property located on Banker Avenue (Tax Map No. 71.17-2-1). The Zoning Board opened a public hearing on this application. The notice of public hearing was read into the record, noting that the notice had 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. John Dowd, Esq. was present for the applicant. Chairman Steinbach requested that Mr. Dowd review the application. Mr. Dowd stated that the applicant was seeking a variance to allow the construction of a driveway over the paper street identified as Banker Avenue on the filed subdivision map creating the Kent lot, but which area had not been improved by a public roadway. Mr. Dowd stated that absent the variance, the Kent lot is essentially a landlocked parcel not capable of being developed. Chairman Steinbach then opened the floor for receipt of public comment. Steve Mullinio, 29 Banker Avenue, stated that he was not necessarily against the variance, but had serious questions concerning it. Mr. Mullinio stated that he owned all the property on the west side of the Banker Avenue “paper street” and is now essentially all woods; that Mr. Kent had previously started to clear trees about two years ago in the area of the paper street, but had also extended tree clearing onto Mr. Mullinio’s property, and had also started to take down a chain link fence that was on Mr. Mullinio’s property, and that Mr. Mullinio had stopped that construction; Mr. Mullinio asked how Mr. Kent would get from his lot to the portion of Banker Avenue that is currently improved and paved, and that he was opposed to having Kent go over any part of his private property; Mr. Mullinio generally asked how Mr. Kent was going to get from his parcel out to the improved Banker Avenue, as Mr. Mullinio owned all the property to the west of the Banker Avenue paper street, Mr. DelSignore owned all the property to the north of the Kent lot, and a new owner, DiNova, owned all property to the south of the Kent

lot; Mr. Mullinio also questions why Kent could not access Bleakely Avenue from his lot. Member Trzcinski questioned how the driveway leading from the DiNova lot over the Banker Avenue paper street leading to the improved, paved Banker Avenue was constructed. Mr. Mullinio stated that he was not clear on that issue, but that the DiNova circular driveway had been there for years. Jim Saunders, 19 Banker Avenue, stated that he built his house in 1968 and moved into that house in 1969, and that the circular driveway now owned by DiNova leading to the improved Banker Avenue had been there in 1969. Mr. Dowd responded to the question regarding accessing the Kent lot to Bleakely Avenue, stating that while the Kent lot had a twenty foot strip leading to Bleakely Avenue, given the length of the driveway which would need to be constructed from Bleakely Avenue to any home constructed on the Kent lot, Town Code required that driveway to be thirty feet wide, but Kent only owned a twenty foot wide strip connecting to Bleakely Avenue. Mr. Dowd stated that Kent was trying to minimize the extent of any variance, in that the variance for a driveway width leading to Bleakely Avenue would be greater than the variance requested to connect the Kent lot to the improved Banker Avenue. Mr. Dowd characterized the paper street as a right-of-way. Attorney Gilchrist questioned the characterization of the paper street as a right-of-way, and requested that Mr. Kreiger confirm whether Banker Avenue was deeded to the Town of Brunswick, and if so, whether the entire length of Banker Avenue was included in that deed. The Zoning Board also questioned whether two new owners of property on Banker Avenue, located at 26 Banker Avenue and 28 Banker Avenue, had been mailed notice of the public hearing. Mr. Kreiger stated that after the initial mailing of the notice of public hearing, he was notified that two new owners located at 26 Banker Avenue and 28 Banker Avenue had not been identified correctly on the service list, but that a subsequent mailing to those individuals had occurred. The Zoning Board requested that

the mailing to new owners at 26 Banker Avenue and 28 Banker Avenue be confirmed. Member Trzcinski also questioned how Kent would access the improved Banker Avenue without going over lands of DiNova or lands of Mullinio. In light of the outstanding questions concerning notice of the public hearing as well as fee title ownership to the entire length of the Banker Avenue paper street, Chairman Steinbach stated that the Zoning Board would keep the public hearing open and continue the public hearing at its December 15 meeting. The Zoning Board members concurred. The public hearing on the Kent variance application is held open and adjourned until the December 15, 2014 meeting.

The next item of business on the agenda was an area variance application submitted by Christian McGrath for property located at 205 Bulson Road (Tax Map No. 93.-2-2). The Zoning Board opened a public hearing on this application. The notice of public hearing was read into the record, noting that such notice had 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. The applicant was represented by Ken Bruno, Esq. Chairman Steinbach requested Mr. Bruno to make a brief presentation regarding the application. Mr. Bruno confirmed the submission of the application documents, generally stating that the applicant is seeking a side yard variance of 10 feet. Mr. Bruno stated that the addition to this residence will be reduced to a total of a 10 foot addition, resulting in a setback from the exterior of the addition to the side yard of 15 feet, whereas Town Code requires a side yard setback of 25 feet, resulting in a requested variance of 10 feet. Mr. Bruno also handed up a letter from John Kazunas, owner at 7 Windfield Lane, generally supporting the application and supporting the approval of the area variance. Mr. Bruno stated that Mr. Kazunas was not available to attend the meeting, and wanted to hand up the letter in his absence. Chairman Steinbach received the letter and provided copies to each Zoning

Board member. Chairman Steinbach then opened the floor for receipt of public comment, noting that the Kazunas letter generally supporting the application has been made part of the record. Mark Cipperly, 210 Bulson Road, said he was the owner of the adjacent property to the north, and stated that his comments would be similar to his comments concerning Mr. McGrath's previous variance request seeking a twenty foot variance which was previously denied by the Zoning Board. Mr. Cipperly stated that he was in opposition to the variance, stating that the variance is substantial, being a 40% variance from Town Code requirements; that the need for the variance was self-created, as the addition has already been built without compliance with the Town Code requirements; that Mr. McGrath had other feasible options available, including construction to the rear and other side of the lot; that this would result in a negative impact to the surrounding neighborhood; that the building is just too close to the property line; and Mr. McGrath has already removed trees which would have created a visual buffer; and that Mr. Cipperly did not plant corn on his property next to this constructed addition to the McGrath house because the addition is just too close to the property line; that the value of his land to the north has been diminished; that he is very concerned that the applicant has been allowed to again apply for a variance when his previous request had been denied and does not feel that this is fair, and is not the way that business should be done. Chairman Steinbach asked Mr. Cipperly about the removal of the trees. Mr. Cipperly stated that trees were removed due to the construction of the addition to the McGrath house. Frank Brennanstuhl, 27 Dusenberry Lane, asked why the applicant is in front of the Zoning Board again when his prior variance request was denied several months ago, and further asked why the addition is still there and had not been removed; Mr. Brennanstuhl also questioned whether the addition to the McGrath house would really end up being 15 feet from the property line, acknowledging that he did not know where the exact

boundary line was located; that Mr. McGrath had built this addition to the house without a building permit and without any Building Department inspections, and that if Mr. McGrath's contractor was at fault, Mr. McGrath should sue his contractor; that if this structure was a temporary shed, then maybe having it within 15 feet of the side yard property line would be acceptable, but a permanent addition to the house within 15 feet of the side yard boundary line should not be allowed; that if the adjacent property owner to this proposed addition was not agreeable, then the Zoning Board should deny the variance and that should be the end of it, and that Mr. Cipperly is the only property owner truly affected by this addition; that Mr. Brennanstuhl is adamantly opposed to the variance application, and that Mr. McGrath should be required to comply with Brunswick Code requirements like other property owners in town. Peg Cipperly, 210 Bulson Road, reiterated her husband's comments and stated that she was opposed to the variance application; that she was very disappointed that the Zoning Board was revisiting this matter; that the addition will still be very close to the Cipperly property boundary; then questioned what would happen to the foundation and deck that are currently constructed on the McGrath lot. Chairman Steinbach generally commented that Mr. McGrath, as the property owner, is proposing to reduce the size of the addition to the house, and that his current application is changed from his prior application request, and that Mr. McGrath does have the legal right to apply for this reduced variance as the facts are different. Chairman Steinbach stated that the Zoning Board would not entertain the same application as previously submitted by Mr. McGrath, but that he is proposing to reduce the size of the addition by one-half and is requesting a reduced side yard area variance. Christian McGrath, 205 Bulson Road, stated that he has not taken any trees down as a result of the construction to his house and that one tree has been trimmed, but that it is still standing, and it is located on his property; Mr. McGrath also

stated that Mr. Cipperly had planted corn for the last 3 years on his property in the same place, and it does not look like he had decided not to plant in the same location on his property; Mr. McGrath also stated that the addition to the house would be cut in half if this current application is approved, and that he is simply trying to salvage something from the construction of the addition that was clearly a mistake by his contractor since his contractor did not obtain the necessary building permit, and that he is not trying to hide anything. Mr. Bruno handed up pictures taken on November 17, 2014 regarding trees on the McGrath property. Mr. Cipperly stated that there are no trees in front of the addition to the McGrath house. Mr. Bruno stated that his client and Mr. Cipperly had tried to resolve this matter during the last application proceedings, but had failed to reach agreement; that the addition to the McGrath house does not impact the neighborhood, but rather Mr. McGrath is trying to improve the neighborhood. Member Hannan asked about Mr. McGrath's contractor. Mr. McGrath stated he has tried to track down his contractor, but he has not been able to do so and it looks like his contractor has "vanished". Peg Cipperly noted for the record that she felt badgered by Mr. McGrath's efforts to force a settlement of this matter previously, and that while this tree had been trimmed on the McGrath property, it has totally defoliated. Chairman Steinbach suggested to the Zoning Board members that the public hearing on this matter be continued at the December 15 meeting. The Zoning Board members generally concurred. This matter is adjourned and the public hearing will be continued at the December 15 meeting.

Two items of new business were discussed.

The first item of new business was an application by Karen Noon for an area variance for property located at 27 Eastover Road, specifically a right side yard setback of 6 feet for the replacement of a shed, whereas Town Code requires a 15 foot setback for the shed. Mrs. Noon

was present, and explained to the Zoning Board that there had been a shed on her property for 35 years, that she presumed the shed was grandfathered and had proceeded to have the old shed removed and had already ordered a new shed to be put in the same place, but realized that the new shed would not comply with the side yard setback requirements and is therefore asking for the variance from the Town. Mrs. Noon stated that the shed would be in the same location and would be the same size as the previous shed and that her neighbors were not opposed at all to the application. Mrs. Noon stated that there is really no other place for the shed in her backyard given the location of her septic system. Member Schmidt asked about the septic system location on the sketch map that had been submitted by Mrs. Noon. Mrs. Noon stated that the septic system was basically the entire half of her backyard along the entire length of Nicholas Drive, and therefore the shed had to be located on the other side of her backyard. The Zoning Board members determined that the variance application was complete and ready for public hearing. This matter is placed on the December 15 agenda at 6:00 pm for public hearing. Mrs. Noon confirms that the Zoning Board members had access to her property to see the property before the December meeting.

The next item of new business was a sign variance application submitted by AG Distributors & Suppliers for property located at 831 Hoosick Road, the new Ace Hardware store. Tom Dingley was present representing AG Distributors & Suppliers. Mr. Dingley generally reviewed the application, stating that Town Code allowed for the installation of two signs, whereas the owner of the Ace Hardware store was requesting approval for a total of 7 signs. Mr. Dingley stated that the size of the lettering as well as the total square footage of the proposed signs were compliant with Town Code, but that the owner of the Ace Hardware store was looking for a total of 7 exterior signs. Mr. Dingley explained the additional 5 signs being

requested are to display product names, so that potential customers know that certain brand name products were available in the Ace Hardware store. Mr. Dingley confirmed that the only variance required was on the total number of signs, not total square footage of signs or size of the lettering. Chairman Steinbach asked when the Ace Hardware store knew they wanted a total of 7 signs, and why the application for this variance was being made now when the renovation to the Ace Hardware store was nearly complete. Mr. Dingley stated that proposed signage on the Ace Hardware building was shown on the plans that were in front of the Brunswick Planning Board, and that the owner did not realize that he needed variances at time. Member Schmidt asked whether there was only one entrance to the Ace Hardware store. Mr. Dingley stated that there was only one main entrance, but that there was a side entrance near the outdoor display area. Member Schmidt stated that the additional signage was not needed for directional purposes, but was only needed for notification of certain brand name products. Mr. Dingley confirmed this. Member Schmidt asked why the additional brand names of products could not be shown on one sign rather than an additional five signs. Member Schmidt stated that if the size of the total square footage was compliant with Town Code requirements, why not show the brand name items on one sign, requiring a variance of only one additional sign instead of five additional signs in excess of Town Code requirements. The Zoning Board also stated that these proposed additional signs were not needed for directional purposes, but just for advertising purposes. Member Hannan questioned whether the signage could change in the future if particular brand name products changed that were being offered at the Ace Hardware store. Mr. Dingley did confirm that the product name could change in the future, but the signs would have the same style and size. Member Hannan thought the total number of signs requested were a problem, and could result in a significant number of signs on other commercial locations in Town. Member

Hannan did note that the Zoning Board had limited the Tractor Supply signage to a total of three signs. The Zoning Board requested Mr. Kreiger to confirm that the total square footage of the requested signs were within Town Code requirements. The Zoning Board members found the application to be complete and ready for public hearing. The matter is scheduled for public hearing at 6:15 pm at the Zoning Board's December 15 meeting.

The index for the November 17, 2014 meeting for the Zoning Board of Appeals is as follows:

1. Kent – area variance – 12/15/14 (public hearing to continue).
2. McGrath – area variance – 12/15/14 (public hearing to continue).
3. Noon – area variance – 12/15/14 (public hearing to open at 6:00 pm).
4. AG Distributors & Suppliers – sign variance – 12/15/14 (public hearing to open at 6:15 pm).

The proposed agenda for the December 15, 2014 meeting currently is as follows:

1. Noon – area variance - (public hearing to open at 6:00 pm).
2. AG Distributors & Suppliers – sign variance – (public hearing to open at 6:15 pm).
3. Kent – area variance - (public hearing to continue).
4. McGrath – area variance - (public hearing to continue).