

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

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

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

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

Chairman Steinbach welcomed Member Clemente to the Board, and thanked her for providing her time and public service to the Town of Brunswick.

The Zoning Board members reviewed the draft minutes of the November 17, 2014 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the draft minutes of the November 17, 2014 meeting were unanimously approved (Member Clemente abstaining) without correction or amendment.

The first item of business on the agenda was the area variance application submitted by Karen Noon for property located at 27 Eastover Road. The Zoning Board opened a public hearing on the application. The notice of public hearing was read into the record, also stating that the notice was 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 requested that Mrs. Noon identify herself and address for the record. Having done so, Chairman Steinbach then inquired of Mrs. Noon as to whether there were any changes to the area variance application. Mrs. Noon stated that there were no changes to the application. Mrs. Noon stated that she was looking to replace an old shed that she removed from her property with a new shed of the same size and location. Chairman Steinbach then opened the floor for the receipt of public

comment. Tom Sweeney, 19 Eastover Road, stated that he was the immediate neighbor to the Noon property and that he had spoken to more than half of the property owners on the service list for this public hearing, and that all of these neighbors were in favor in granting the area variance Mrs. Noon, including himself. There were no further comments from the public. Chairman Steinbach inquired whether the members of the Zoning Board had any questions on the application. Member Hannan wanted to confirm with Mrs. Noon that the size of the new shed was the size of the shed that had been removed. Mrs. Noon stated that the shed was the same size. Member Schmidt stated for the record that he had gone to this property but could not see the location of the shed given the snowfall. Member Steinbach noted that he had done the same site visit. Member Schmidt also stated that in his opinion, given the location of the septic system in the backyard, the proposed location of the shed was the only realistic place to locate the shed on the property. Chairman Steinbach again asked if there were any further public comments on the application. Hearing none, the Zoning Board closed the public hearing on the Noon area variance application. Attorney Gilchrist noted for the record that the application sought an area variance in a residential application, which constitutes a Type 2 action under the State Environmental Quality Review Act (SEQRA) and no further action under SEQRA is required. Member Steinbach asked whether the Zoning Board members were ready to proceed with deliberating on the application. All the Zoning Board members confirmed they were ready to deliberate and collectively felt that there was no significant issue on this application given the replacement of the same size shed in the same location on the property with no opposition from any of her neighbors. Attorney Gilchrist generally reviewed the standards for the grant of an area variance. Chairman Steinbach stated that in his opinion, the Noon area variance did not produce an undesirable change in the character of the neighborhood, since this was a

replacement in kind of a shed in the same location; that the area variance did not create a detriment to nearby properties, noting that none of Mrs. Noon's neighbors objected to the issuance of the variance; that given the location of the septic system in the backyard there was no feasible alternative to Mrs. Noon to put the shed in her backyard; that while the side yard setback is 15 feet under the Brunswick Town Code and Mrs. Noon seeks to place the shed 6 feet from the property line, Chairman Steinbach noted that a shed had been placed in that location for several years and this was merely a replacement in kind which did not raise to the level of a substantial variance; that the requested variance did not create an adverse effect on the physical or environmental conditions in the neighborhood; and that the application for the side yard setback was not necessarily self-created as Mrs. Noon was merely seeking to replace a shed that had been in the same location for several years. The remaining Zoning Board members concurred with these comments. Member Trzcinski then made a motion to grant the area variance on the Noon application which motion was seconded by Member Hannan. The motion was unanimously approved, and the area variance granted to the applicant.

The next item of new business was a sign variance application submitted by AG Distributors for the new Ace Hardware store located on Hoosick Road. The Zoning Board opened a public hearing on this application. The notice of public hearing was read into the record, noting that that public hearing notice had been published in the Troy Record, placed on the Town sign board, and posted on the Town website, and mailed to owners of all adjacent properties. Tom Dingley was present for the applicant. Chairman Steinbach inquired of Mr. Dingley as to whether there were any changes to the application from that described in the November meeting. Mr. Dingley stated that there were no changes to the application, and that that application sought the variance to allow the installation of a total of seven exterior signs on

the Ace Hardware Store, whereas the Town Code allows for a total of two exterior signs. Mr. Dingley did confirm that the total square footage of the signs was within Brunswick Code requirements, but that the total number of signs requested is above that allowed in the Brunswick Town Code. Chairman Steinbach then asked whether any members of the Zoning Board had any questions for Mr. Dingley. The Members of the Zoning Board had no questions for Mr. Dingley at this time. Chairman Steinbach then opened the floor for the receipt of public comment. No members of the public wished to comment on this application. Member Schmidt then made a motion to close the public hearing, which motion was seconded by Member Hannan. The motion was unanimously approved, and the public hearing on the AG Distributors sign variance application was closed. Attorney Gilchrist then stated that the sign variance application was subject to review under SEQRA, and directed the Zoning Board members to review the environmental assessment form in the application documents. Member Schmidt noted that the environmental assessment form needed to be corrected, since the form indicated that the use was compliant with the Brunswick Town Code, but that the total number of signs sought was not compliant with the Brunswick Town Code. The correction in the environmental assessment form was noted for the record. Member Hannan then stated that he was concerned about the impact of allowing the total number of signs on the Ace Hardware Store, and whether other businesses in that location would also want approval for additional signs. Mr. Hannan stated that he was pro-business, but that a significant number of signs can be overbearing. Member Hannan thought that the information sought to be located on the five additional signs could be set forth on one larger additional sign as opposed to a number of smaller signs. Mr. Dingley responded that the schematic of the sign proposal showed that the signs would blend in with the new exterior for the Ace Hardware building, that the lighting for these smaller additional exterior

signs was dimmer than that for the larger Ace Hardware sign in the center of the building, and that the smaller signs were in the nature of accent signs designed to advertise for brand name items on sale at the Ace Hardware store. Mr. Dingley also commented that the proposal was similar in nature to the exterior signage on the Wal-Mart and Price Chopper stores, which did advertise for products and services provided within each of those stores. Chairman Steinbach stated that these comments were directed more toward the variance application itself, and that the Zoning Board first needed to make a SEQRA determination. Member Schmidt made a motion to adopt a negative declaration under SEQRA, stating that he did not feel the additional signage on the Ace Hardware store would result in any significant adverse environmental impact. That motion was seconded by Member Trzcinski. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board then reviewed the standards for the grant of the sign variance. As to whether the additional signage resulted in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Clemente questioned whether the signage would be uniform in terms of font size, color, and overall sign size as depicted on the schematic submitted with the application documents. Mr. Dingley confirmed that the size of the signs, the color of the signs, and the general font size would all be uniform. Member Clemente asked about the brand names, and whether the signs to be used would include brand name logos or colors, rather than being the same size and color as depicted on the schematic. Mr. Dingley stated that the logo font or logo colors would not be used on the exterior signs and that the exterior signs will be uniform in terms of letter size and colors. Mr. Dingley stated that the particular brand logos would be used inside the store only, and that the same template would be used for all exterior signage. Member Trzcinski stated that the store already had all of the lighting set up for these additional signs, and was not pleased that

the lighting was installed without first having the signage approved by the Town. Mr. Dingley stated that the owner did not seek to undermine any decision of the Zoning Board but that the owner had not been aware of the need for a variance for the additional signage since the signs had been depicted on the site plan in front of the Planning Board, and further Mr. Dingley explained that completion of all electrical work as set forth on the approved plans needed to be completed in order to get a completed certificate of occupancy from the Town. As to whether the applicant had a feasible alternative to the requested total number of signs on the exterior of the building, Member Schmidt stated that in his opinion, an alternative was available by using one sign listing out a number of products rather than having a total of seven smaller signs on the exterior of the building. Member Hannan inquired whether one or two signs could be used with letters that were easily changeable; however, Member Hannan also suggested that the number of signs depicted on the schematic in the application documents were more aesthetically pleasing than one large sign in that one large sign might take away from the look of the new exterior of the building. As to whether the requested variance was substantial, Member Trzcinski stated that she felt that the requested variance was substantial, since the Town Code allowed only a total of two exterior signs and the applicant was seeking approval for a total of seven signs. Member Hannan wanted to confirm that the total square footage of all proposed signs still met Town Code requirements. Mr. Kreiger confirmed that the total square footage was in compliance with the Brunswick Town Code. Member Schmidt felt that the requested variance was less substantial given that the total square footage of the signs still met Town Code. Chairman Steinbach wanted to confirm that six of the proposed seven exterior signs were for the Ace Hardware store, and that the seventh sign on the exterior of the building was for the dance studio tenant. Mr. Dingley confirmed this. As to whether the requested variance would result in an

adverse effect on the physical or environmental conditions in the neighborhood, the Zoning Board noted that a SEQRA negative declaration had already been adopted on this application, and further Chairman Steinbach commented that this area of town had generally become commercial in nature and that there would be no effect on the environment or physical conditions in the neighborhood. All Zoning members generally concurred. As to whether the need for the variance was self-created, Chairman Steinbach noted that all requests for sign variances are generally self-created, but that this factor did not mean the variance couldn't be granted, and that the Board should deal with the merits of this application. Member Hannan stated that he struggles with the need for seven exterior signs, and was very concerned about the precedential value of the decision. Member Hannan stated that a total of seven signs could create a cluttered look, and be overkill. Member Hannan felt that seven signs are a lot of signs for one building. Chairman Steinbach wanted to confirm that all the exterior signs would be made of wood. Mr. Dingley stated that they would either be made of wood or a composite material to look like wood. Chairman Steinbach then asked whether the lettering on the signs would be painted, or would they be raised in a 3 dimensional pattern. Mr. Dingley was not certain on this issue, but confirmed that the signs would be uniform in character. Chairman Steinbach wanted to confirm that the signs being proposed were the same in scope as that depicted on the schematic. Mr. Dingley confirmed that the schematic was an accurate portrayal of the exterior of the building including the proposed signage. Chairman Steinbach asked whether the signs would be attached directly to the building, or be on some type of frame away from the exterior of the building. Mr. Dingley stated that the signs would be attached directly to the building and be flush to the exterior of the building. Chairman Steinbach wanted to confirm that the signs would be lit from overhead and not otherwise be illuminated. Mr. Dingley

confirmed that the lighting for the signs was already installed, and they consisted of low light LED goose neck lights, which were not as bright as the Ace Hardware store sign located in the center of the building. Member Hannan asked whether the Ace Hardware owner had any other options regarding signage if the variance was not granted. Mr. Dingley stated that the owner had not prepared any alternate plans and did not have any alternate plans at this time. Member Schmidt stated that he originally did not favor the application, but after having reviewed the application materials and the presentation, he felt that the signs blended with the building and looked consistent with the building exterior. Member Trzcinski felt that the building looks good as it is and installing the additional signs would make the building look like a carnival or a building in the Town of Colonie. Member Clemente stated that the schematic provided in the application materials showed a clean, symmetrical look to the proposed signage on the exterior of the building, which took away from any “carnival” look to the building. Member Clemente asked whether the Zoning Board had the authority to condition any approval for the variance. Attorney Gilchrist stated that the Board did have the authority to condition any approval. Chairman Steinbach asked if the board was ready to entertain a motion on the application in light of the deliberations held. The members were prepared to move forward on the application. Member Clemente then made a motion to approve the sign variance application subject to appropriate conditions. Upon deliberation, the Zoning Board members determined that the following conditions were applicable to the motion:

1. Each of the proposed signs was limited to 16 ½” x 84” size.
2. The location of the exterior signage must be consistent with the schematic included in the application materials, and any change in the exterior sign locations must be reviewed by the Zoning Board in an application to amend the variance.
3. The current overhead LED lighting for each of the exterior signs was acceptable, and that if any change was proposed to the lighting for the exterior signs, the applicant must first have that proposal reviewed by the Zoning Board through an application to amend the variance.

4. The signs may not include any specific brand logo or brand color, and that the signs must be uniform in terms of font/lettering size, including a maximum of eight inch vertical lettering on each of the exterior signs.
5. The exterior signs must be made of wood or composite materials to resemble wood, and that the materials must be uniform for all exterior signs.
6. The same color must be used for each of the exterior signs so that the color is uniform.
7. The exterior signage must be mounted flush to the exterior of the building.

Chairman Steinbach seconded the motion to approve the sign variance application subject to the stated conditions. A roll call vote was taken. Member Hannan voted aye; Member Trzcinski voted no; Member Schmidt voted aye; Member Clemente voted aye; Chairman Steinbach voted aye. The sign variance application was approved subject to the stated conditions by a vote of 4-1, (Member Trzcinski voting no).

The third item for 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). Mr. Kent and attorney John Dowd were present on the application. Chairman Steinbach noted that this was the continuation of a public hearing which had been opened at the November meeting and kept open by the Zoning Board. Attorney Gilchrist noted that there was a question at the November meeting as to whether the current owners of 26 Banker Avenue and 28 Banker Avenue were provided notice of the public hearing, and noted for the record that following the November meeting, direct notice of the continuation of the public hearing was mailed to the current owners of 26 Banker Avenue and 28 Banker Avenue. Chairman Steinbach then opened the floor for receipt of additional comment on the application. Anthony DiNova, 28 Banker Avenue, stated that he was not sure where to go from here, but that he felt a large piece of his driveway would be impacted by his application. Mr. DiNova stated that he had moved into his home in May of 2013, and that this application would impact his property. Chairman Steinbach asked whether

there was already an asphalt driveway and walkway at the property when he purchased it. Mr. DiNova stated the asphalt driveway and walkway was already there when he bought the property. Chairman Steinbach inquired whether there were two driveways or one driveway for the DiNova property. Mr. DiNova stated there was one driveway that looped around his house, so that it appeared there were two driveways, but it was really one looped driveway. Member Trzcinski stated there was still an outstanding question as to who owned the right-of-way shown on the survey constituting the Banker Avenue paper street. Mr. Kreiger stated that he had conducted a search at the Town records and could not find a deed for Banker Avenue. Attorney Gilchrist asked the applicant whether he had completed any title work on the Banker Avenue paper street area. Attorney Dowd stated that he did have title work done by Trinity Abstract, and that the searcher could not find any record of a deed from the Bleakley Family to the Town of Brunswick for the Banker Avenue paper street, but that Attorney Dowd did speak with the Executor of the Bleakley estate who felt that the 40 foot Banker Avenue right-of-way was transferred to the Town sometime back in the 1950s. Attorney Gilchrist requested Attorney Dowd to submit the Trinity Abstract title report for review. Mr. Dowd stated that he would arrange for that. Member Trzcinski stated that she could not decide this application until that issue of ownership of the Banker Avenue paper street was resolved. Attorney Gilchrist stated that this was a significant issue, since different legal standards apply as to whether the property is owned by the Town or whether it is privately owned. Attorney Gilchrist also asked Mr. DiNova whether he had any title work done when he acquired his property in 2013. Mr. DiNova stated that he believed he had title work done, and will search for that title work and if he finds it he will provide it to the Town for review. Attorney Dowd stated that if it is ultimately determined that the property was not deeded to the Town of Brunswick, but still is titled in the Bleakley

family, he wanted to have the option considered as to whether Bleakley could transfer title to the Banker Avenue paper street to Kent, and whether that would make this application easier for the Zoning Board to consider. That matter will be entertained after the title work has been reviewed. Attorney Gilchrist stated that the title ownership of the Banker Avenue right-of-way is important, but that the Zoning Board needed to consider that if the public hearing is closed at the December meeting, the Zoning Board would have only 62 days in which to render a decision, which may not be adequate time to resolve the paper street ownership issue. The Zoning Board members considered this, and determined to keep the public hearing open until the ownership of the Banker Avenue paper street issue is resolved. The Zoning Board unanimously determined to keep the public hearing open, and continue the public hearing at the Zoning Board's January meeting. On that issue, the Zoning Board noted that the third Monday of January is a legal holiday, and determined that the Zoning Board meeting for January 2015 would be held on Monday, January 26. Attorney Dowd requested that if the ownership of the Banker Avenue paper street is not resolved by the January 26, that he be given notice and that the matter could then be moved to the February meeting. The public hearing on the Kent area variance application is held open and adjourned to the January meeting.

Mr. Kreiger reported that there were no items of new business.

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

1. Noon – area variance – granted.
2. AG Distributors – sign variance – granted subject to conditions.
3. Kent – area variance – 1/26/15 (public hearing to continue).

The proposed agenda for the January 26, 2015 meeting currently is as follows:

1. Kent – area variance - (public hearing to continue).
2. McGrath – area variance - (public hearing to continue).