

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 15, 2015

PRESENT WERE, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CAROLINE TRZCINSKI.

ABSENT from the meeting was CHAIRMAN MARTIN STEINBACH.

ALSO PRESENT was MONICA NANN-SMITH.

Member Clemente made a motion to appoint Member Trzcinski as Chair for this meeting, which motion was seconded by Member Schmidt. The motion was unanimously approved, and Member Trzcinski appointed as Acting Chair for this meeting.

The draft minutes of the May 18, 2015 meeting were reviewed. One correction was noted, at page 5, line 4, with the name "Harry Kaufman", corrected to "Perry Kaufman". Subject to the stated correction, Member Shover made a motion to approve the minutes of the May 18, 2015 meeting, which motion was seconded by Member Clemente. The motion was unanimously approved, and the minutes of the May 18, 2015 Zoning Board Meeting were approved subject to the stated correction.

The first item of business on the Agenda was the area variance application submitted by Debbie Nichols for property located at 249 Hillcrest Avenue. A public hearing was opened on the application. The notice of public hearing was read into the record, with that notice having been published in The Record, placed on the Town sign board, posted on the Town website, and mailed to owners of all properties within 500 feet of the project site. Debbie Nichols was in attendance on the application. Member Trzcinski inquired whether there was any changes or additions to the

application. Ms. Nichols stated that there were no proposed changes or additions. Member Trzcinski then opened the floor for the receipt of public comment, requesting anyone wishing to speak in favor of, or against, the proposed variance to come forward. No one in attendance wished to provide any public comment. Member Trzcinski asked the Zoning Board Members whether they had any questions or comments. Member Shover stated that the proposed porch will be very close to the road. Member Schmidt stated that there used to be a porch on this house but that it had burned down 20 years ago when there was a substantial fire at the house, but asked Ms. Nichols whether the porch was ever that close to the road before. Ms. Nichols said that the porch was not as close to the road previously, but that the porch was in the same general location and the road had been widened since the time of the house fire. Member Trzcinski asked why the porch had not been rebuilt immediately after the fire. Ms. Nichols stated that it was due to economic considerations. Member Trzcinski asked whether the porch would be enclosed. Ms. Nichols stated that the porch would be enclosed with windows, that it would be a living area but without heat, and would function essentially as a three-season room. Member Clemente commented that the porch would enhance the look of the house. Ms. Nichols stated that she agreed with that assessment, and the neighbors agreed that it would improve the look of the house. Member Shover again commented that this would be very close to the road. Ms. Nichols stated that she had reviewed this with the neighbors, that none of the neighbors were in opposition to constructing the porch, and no one had come to the public hearing to oppose it. Member Trzcinski then asked for any further comment from the public. Hearing none, Member Clemente made a motion to close the public hearing on the Nichols area variance application, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. Thereupon, the Zoning Board proceeded to deliberate on the application. Member Clemente did

raise a concern regarding snowplowing in the winter, and whether there was adequate room for snow storage. Ms. Nichols stated that there has never been a problem with snow banks at this location, and that the Town does a very efficient job of plowing in the winter. Member Trzcinski asked whether there were any further questions or comment by the Zoning Board Members. There were none. Attorney Gilchrist stated for the record that this application seeks an area variance for residential application, and therefore constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. The Zoning Board Members then proceeded to deliberate on the area variance elements. The Zoning Board Members found that the proposed porch construction will not result in an undesirable change in the character of the neighborhood nor create a detriment to nearby properties; that due to the constraints of the lot, that there was not any feasible alternative to constructing a front porch on this house in the general location proposed; that the area variance is substantial, but the proposal was to merely reconstruct the porch which previously existed and was destroyed through no fault of the owner, and that while the variance was substantial in terms of number of feet, the variance was not substantial when looking at the total lot and lot layout; that the proposed porch construction will not have an adverse effect on the physical or environmental conditions in the area; and that the difficulty was not self-created but rather due to a fire which had destroyed the prior structure. Based upon this deliberation and determinations, Member Shover made a motion to grant the variance as proposed, which motion was seconded by Member Trzcinski. The motion was unanimously approved, and the area variance granted.

The next item of business on the Agenda was the area variance application submitted by Robert Willbrant for property located at 107 Mountain View Avenue. This matter had been addressed by the Zoning Board at its May meeting, at which time the applicant sought a special

permit for a multi-unit dwelling, and also to increase the total number of units from two units to three units, which also necessitated certain area variances. Mr. Willbrant was present on the application, and informed the Zoning Board that he is now proposing to maintain the structure as a two unit structure only, eliminating the need for any area variances. Mr. Willbrant has submitted a revised application form, noting that the application now seeks only a special permit for a multi-family structure. Mr. Willbrant also stated that he had spoken with the neighbors in the area, and that they are all in favor of the renovation of the structure because it is currently in significant disrepair and an eyesore. Member Trzcinski inquired as to the proposed layout of the units on the first and second floor. Mr. Willbrant reviewed the floor plans and square footages for both the first and second floor. On the first floor, Mr. Willbrant proposes a three bedroom unit totaling approximately 1,652 square feet. On the second floor, Mr. Willbrant is proposing a two bedroom unit, totaling approximately 946 square feet. Mr. Willbrant intends to reside on the first floor, and have the second floor as a rental unit. Mr. Willbrant proposes to add new siding to the structure, install new windows, and update the heating and air conditioning for the structure. The Zoning Board generally reviewed the application materials, and deemed them to be complete for the scheduling of a public hearing on the application. Attorney Gilchrist noted that an environmental assessment form will need to be completed by Mr. Willbrant. This matter has been placed on the July 20, 2015 Agenda for a public hearing to commence at 6:00 p.m.

The next item of business on the Agenda was an area variance application submitted by Michael Schrom for property located at 1 Carla Lane. This matter had been scheduled for public hearing. The notice of public hearing was read into the record, with that notice having been published in The Record, placed on the Town sign board, posted on the Town website and mailed to owners of all properties within 500 feet of the project site. Michael Schrom was in attendance

on the application. Member Trzcinski asked whether there were any changes or additions to the application. Mr. Schrom stated that there were no changes or additions, and that he had coordinated with Concord Pools since the last Zoning Board meeting, and Concord Pools had confirmed the proposed location of the pool. Member Trzcinski then opened the floor for receipt of public comment, both in favor of, and opposed, to the proposed variance. No one in attendance sought to provide any comment. Member Trzcinski inquired whether any member of the Zoning Board had any questions. Member Schmidt stated that he had looked at this property, that it was a very small lot, and that there did not appear to be any other location on the lot for the proposed pool. Member Clemente stated that the neighbor most affected by this proposal already had a pool in their yard as well. Mr. Schrom stated that he had spoken with that neighbor, and the neighbor was in support of having the pool installed in relation to the common property line. Member Clemente asked whether the existing fence would remain in place. Mr. Schrom stated that the fence would remain in place, plus he would be adding additional vegetation for screening purposes. Member Trzcinski then asked whether there was any further comment. Hearing none, Member Clemente made a motion to close the public hearing, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing closed. The Zoning Board then proceeded to deliberate on the application. Attorney Gilchrist noted that the application sought an area variance for a residential application, and therefore constitutes a Type 2 action under SEQRA, and no further SEQRA determination is necessary. The Zoning Board Members then proceeded to deliberate on the elements for the proposed area variance. The Zoning Board found that the requested variance and proposed pool location would not result in an undesirable change in the character of the neighborhood, nor create a detriment to nearby properties, noting that several other of the lots in this neighborhood already had pools similarly situated in the yard; that there was not

a feasible alternative available to the applicant for installation of the pool given the constraint of the lot; that the requested variance can be deemed to be substantial, but that the general character of this neighborhood, including the number of pools in surrounding yards, must be considered in relation to this element; that the installation of the pool in the proposed location will not have an adverse effect on the physical and environmental conditions in the neighborhood; and that the difficult can be deemed to self-created, but that this consideration does not preclude the granting of the area variance. Based upon such deliberation and findings, Member Trzcinski made a motion to grant the area variance application as proposed, which motion was seconded by Member Shover. The motion was unanimously approved, and the area variance granted.

The next item of business on the Agenda was the area variance application submitted by Brian Raymond for property located at 21 Oak Tree Lane. This matter was scheduled for public hearing. The notice of public hearing was read into the record, with notice being published in The Record, place on the Town sign board, posed on the Town website, and mailed to owners of all properties within 500 feet of the project site. Brian Raymond was in attendance at the meeting. Member Trzcinski asked whether there were any changes or additions to the application. Mr. Raymond stated that there were no changes or additions to the application. Member Trzcinski then inquired whether anyone in attendance wished to speak in favor of the application. Joe Makowiec, 25 Oak Tree Lane, stated that he was not here to speak in favor or opposition, but merely had a question as to where exactly the proposed ground mount solar array would be located on the Raymond site. Rob Jukes, 20 Oak Tree Lane, also had the same question as to where the ground mount solar array would be located on the Raymond lot. Mr. Raymond stated it would be located generally right in the middle of his side yard line, which is the location where the solar company advised to locate the solar array for maximum efficiency. Mr. Jukes asked about the size

of the solar array system. Mr. Raymond stated that the solar array would be approximately 24 feet long, and approximately 8 feet high. Mr. Raymond also stated that the solar company advised that the only other available location for the ground mount solar array for maximum efficiency was in the front yard. Neither Mr. Jukes nor Mr. Makowiec stated they wanted the solar array located in the front yard. There was some discussion about the final location of the solar array equipment, and Mr. Raymond indicated he would work to locate the solar array to the rear of the lot. Mr. Jukes reiterated that he was not opposed to the solar array system, but he would like to see the system located deeper into the Raymond lot, more toward the rear. Mr. Makowiec concurred, and stated that he was not opposed to the variance for the solar array installation. Member Trzcinski asked whether there were any further comments. Hearing none, Member Shover made a motion to close the public hearing, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing closed. The Zoning Board Members proceeded to deliberate on the Raymond area variance application. Attorney Gilchrist stated that the application sought an area variance for residential application, and therefore constituted a Type 2 action under SEQRA and no further SEQRA determination was required. The Zoning Board then proceeded to deliberate on the elements for the area variance. The Zoning Board Members found that the installation of the ground mount solar array equipment in the proposed location would not result in an undesirable change in the character of the neighborhood nor create a detriment to nearby properties; that given the reduction in solar panel operation efficiency, there was not a feasible alternative location on the lot, finding that the front yard was not a feasible alternative for the solar array installation; and that the proposed area variance was substantial, but noted that none of the property owners speaking at the public hearing were opposed to the location; that the installation of the solar array equipment would not have an adverse effect on the physical or environmental

condition in the neighborhood; and that the requested variance was self-created, but that consideration did not preclude the granting of the area variance. Based upon such deliberations and findings, Member Schmidt made a motion to grant the area variance as proposed, which motion was seconded by Member Clemente. The motion was unanimously approved, and the area variance granted.

The next item of business on the Agenda was the special use permit application and area variance application submitted by Matopato, LLC for property located on Oakwood Avenue. Attorney Gilchrist noted that this was the continuation of the public hearing on these applications, which was opened at the May meeting of the Zoning Board. Attorney Gilchrist also noted for the record that written notice had been provided to the City of Troy through letter dated May 28, 2015 concerning this public hearing, and that no comments had been received from the City of Troy. Tom Murley, P.E. was present for the applicant. Mr. Murley reviewed the current applications before the Zoning Board, including the request for a special use permit in connection with the operation of a filling station, as well as two area variance applications, one area variance application for the number of bays in the car wash structure as well as a side yard setback variance for the car wash structure. Mr. Murley noted that the side yard variance is adjacent to a 75 foot wide National Grid corridor. Mr. Murley did note for the Zoning Board's information that he was completing certain updates to the site plan which was currently pending before the Brunswick Planning Board, but such updates did not impact the applications pending before the Zoning Board. Mr. Murley likewise confirmed that he was not in receipt of any comments from the City of Troy in relation to the pending applications before the Zoning Board. Member Shover inquired why the Town Code limited the number of bays in this case to only 3 bays, which to Member Shover seemed arbitrary. Mr. Murley stated that the proposed car wash was self-service, not the type of

drive-thru full service car wash, and that the number of bays for the car wash did fit the size of the proposed site development. Member Trzcinski asked whether any of the remaining Zoning Board Members had any questions. Hearing none, Member Trzcinski asked whether there were any members of the public in attendance who wished to provide public comment. Brian Raymond, 21 Oak Tree Lane, asked where the next nearest gas station was located in relation to the project site. Mr. Murley stated that there was a Stewart's Shop which had gas pumps located at the end of Oakwood Avenue at its intersection with Route 142, but that it was on the opposite side of Oakwood Avenue and presented a traffic hazard trying to get in and out of that location, and that the nearest gas station on the easterly side of Oakwood Avenue was the Stewart's Shop located at the bottom of Hoosick Street at its intersection of Oakwood Avenue. Mr. Raymond commented that the only reason he raised the issue was the need for another gas station, since there seems to be a lot of gas stations and convenience stores being constructed. Mr. Murley stated that having the availability of gas on the easterly side of Oakwood Avenue, without the hazard of having to cross Oakwood Avenue at the existing Stewart's location, would actually help the area and provide a benefit to the northbound traffic on Oakwood Avenue. Member Trzcinski inquired whether there was any further comment by the public. Hearing none, Member Shover made a motion to close the public hearing, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing closed. The Zoning Board Members then proceeded to deliberate on the special use permit and area variance applications. Attorney Gilchrist noted that the application sought a special use permit and area variances in connection with the commercial project, and therefore subject to SEQRA review. Attorney Gilchrist further noted that the action is an unlisted action under the SEQRA regulations, and that an uncoordinated SEQRA review was being undertaken on this application between the Town of Brunswick

Planning Board and the Brunswick Zoning Board of Appeals. Attorney Gilchrist directed the Zoning Board Members to review the information in the Environmental Assessment Form as well as the application documents, to make its determination as to whether this action may result in a potential significant adverse environmental impact, or whether this project will not result in significant adverse environmental impact. Upon review of the information contained in the Environmental Assessment Form, as well as the information generally contained in the special use permit and area variance applications, as well as the information provided directly by the applicant during the public hearing, Member Schmidt made a motion to adopt a negative declaration pursuant to SEQRA, determining that the proposed action will not result in any significant adverse environmental impact pursuant to the SEQRA regulations. Member Shover seconded the motion to adopt the SEQRA negative declaration. The motion was unanimously approved, and a SEQRA negative declaration adopted by the Brunswick Zoning Board of Appeals on the Matopato, LLC applications as part of an uncoordinated SEQRA review with the Brunswick Planning Board. Next, the Zoning Board conducted deliberations concerning the elements for the special use permit application. The Zoning Board Members found that the proposed project, including the filling station, generally promotes the public interest and welfare by providing additional retail sales options for consumers on the north side of Oakwood Avenue without necessity of crossing traffic on Oakwood Avenue for the only other available retail gasoline sales in the immediate area; that the project site is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and other similar facilities; that the proposed site use does provide for adequate parking spaces to accommodate expected customers; that there are no immediate neighbors to the project site, noting that the applicant owns approximately 90 acres of land to the rear of the project site, and a 75 foot wide National Grid corridor is the only other

adjacent property owner, and that the site abuts the Oakwood Avenue corridor, and there is an approximate 200 foot vegetative buffer before any residences in the High Point project is reached; and that a special use permit for the filling station will not cause undue traffic congestion or create a traffic hazard, with Member Shover noting that this issue will be further analyzed by the Planning Board during site plan review. It was also noted by the Zoning Board Members that aside from the question of Mr. Raymond, there were no members of the public that provided any public comment on these applications. Based upon such deliberations and findings, Member Trzcinski made a motion to grant the special use permit for the filling station for this action, which motion was seconded by Member Shover. The motion was unanimously approved, and a special use permit granted. With respect to the area variance in connection with the side yard setback for the car wash building, the Zoning Board Members found that the location of the car wash building would not produce an undesirable change in the character of the neighborhood nor create a detriment to nearby properties, noting that the adjacent property is a 75 foot wide National Grid corridor; that given the proposed number of retail uses and the filling station on the site, and that the currently-proposed lot layout provides an appropriate use of the site, a feasible alternative to the side yard setback was not viable; that the requested side yard setback was not substantial; that the construction of the car wash building in its proposed location would not have an adverse effect on the physical or environmental conditions in the neighborhood; and that while the request for the variance can be deemed to be self-created, such consideration is relevant but does not preclude the granting of the area variance. Member Clemente also commented for the record that if the setback variance is allowed from the side year line, then the site as a whole works for purposes of the overall site plan, including traffic flow behind the buildings. Based upon such deliberations and findings, Member Clemente made a motion to grant the area variance for side yard setback as

proposed, which motion was seconded by Member Trzcinski. The motion was unanimously approved, and the area variance granted. The Zoning Board then proceeded to discuss the area variance for the number of bays in connection with the car wash building. The Zoning Board Members found that adding a fourth bay to the car wash building did not result in an undesirable change in the character of the neighborhood nor create a detriment to nearby properties; that there was an alternate feasible method, which would be to reduce the number of bays to three, but the fact that these bays were designed to be self-service rather than full-service is relevant and there was not a feasible alternative in terms of constructing a fourth self-service car wash bay on the site; that the variance was not substantial; that the variance would not result in an adverse effect on the physical or environmental conditions in the neighborhood; and that while the addition of a fourth car wash bay can be deemed to be self-created, such consideration is relevant but does not preclude the granting of the area variance. Member Clemente asked whether increasing the number of car wash bays would in turn require an increased supply of water. The Zoning Board Members concurred that this was an issue appropriately before the Planning Board on site plan review. Based upon such deliberations and findings, Member Trzcinski made a motion to grant the area variance with regard to the number of bays in the car wash building, which motion was seconded by Member Shover. The motion was unanimously approved, and the area variance granted.

The Zoning Board noted that an additional request had been submitted by the Attorney for David Kent in connection with his area variance application for property located on Banker Avenue. In consideration of the request set forth in Mr. Kent's attorney's letter, the Zoning Board agreed to adjourn this application to its June meeting.

One item of new business was discussed.

An application for a special use permit has been submitted by Shane Cahill for property located at 851 NY Route 351. The applicant seeks a special use permit for an 11-unit apartment building which is currently being operated as a multi-family structure at 851 NY Route 351. Mr. Cahill was not available for the meeting, but was represented by Matthew Robilotta. Mr. Robilotta said that the application has been submitted by Mr. Cahill, who is seeking to purchase the multi-unit structure at 851 NY Route 351. In connection with Mr. Cahill's request of the Brunswick Building Department for zoning verification in connection with this transaction, it was determined that the Brunswick Building Department has no record of a special use permit being issued for a multi-unit structure at this location, even though the structure was built in approximately 1964 and has been used as an 11-unit apartment building for decades. The Building Department noted that the Brunswick Zoning Code, which requires a special use permit for multi-unit structures, was adopted in 1958, and this structure was constructed in 1964 and Town records do not include any special use permit having been issued. Member Clemente asked whether the facility had always been used as 11 units, or whether a lesser number of units have ever existed in the building. The building has always been utilized for 11 apartments, which Member Trzcinski also confirmed. The Zoning Board Members generally reviewed the application materials, and deemed them complete for scheduling a public hearing. This matter is scheduled for public hearing at 6:15 p.m. on July 20, 2015.

The index for the June 15, 2015 meeting is as follows:

1. Nichols – Area Variance – granted.
2. Willbrant – Special Use Permit – July 20, 2015 (public hearing to commence at 6:00 p.m.).
3. Schrom – Area Variance – granted.

4. Raymond – Area Variance – granted.
5. Matopato, LLC – Special Use Permit – granted; Area Variances - granted.
6. Kent – Area Variance – adjourned to July 20, 2015 meeting (public hearing to continue).
7. Cahill – Special Use Permit – July 20, 2015 (public hearing to commence at 6:15 p.m.).

The proposed Agenda for July 20, 2015 meeting currently is as follows:

1. Willbrant – Special Use Permit – (public hearing to commence at 6:00 p.m.).
2. Cahill – Special Use Permit (public hearing to commence at 6:15 p.m.).
3. Kent - Area Variance (public hearing to continue).