

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD AUGUST 17, 2015

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

MONICA NANN-SMITH of the Brunswick Building Department was also present.

The Zoning Board Members reviewed the draft Minutes of the July 20, 2015 meeting. Upon motion of Member Trzcinski, seconded by Member Clemente, the Minutes of the July 20, 2015 meeting were unanimously approved without amendment.

The first item of business on the Agenda was a special use permit application submitted by Shane Cahill for property located at 851 New York Route 351. The applicant seeks approval of a special use permit for an 11-unit apartment building. The Zoning Board opened a public hearing on this application. The Public Hearing Notice was read, with that Notice having been published in the Troy Record, placed on the Town sign board, posted on the Town web-site, and mailed to owners of all adjacent properties. It is noted for the record that this application had initially been noticed for public hearing at the Zoning Board's July 20 meeting, but the applicant was not in attendance. The Zoning Board held the application over to the August 17 meeting, and the public hearing was re-noticed to be held at the August 17 meeting. Shane Cahill was present on the application. Chairman Steinbach requested that Mr. Cahill review the application. Mr. Cahill stated that he is under contract to purchase the 11-unit apartment building located at 851 New York Route 351, but that the contract has a contingency that the building must be permitted by the Town. Mr. Cahill stated that while the building was constructed years ago and has been used as an apartment building, the Town Building Department has no record on the building. There is no special

use permit on file for this building. Mr. Cahill did state that he was able to find real property tax records going back to 1974, which show that the building has been taxed as an 11-unit building. Mr. Cahill stated that he is proposing no changes to the structure. Chairman Steinbach opened the floor for receipt of public comment. No members of the public wish to provide any comment on the application. Chairman Steinbach then inquired whether any of the Zoning Board Members had questions or comments. Initially, Chairman Steinbach asked whether Mr. Cahill had contacted the Brunswick Building Department regarding an inspection of the property. Mr. Cahill stated that there have been no inspections of the property by the Building Department to his knowledge. Member Clemente asked whether there were any Town regulations applicable to 11-unit apartment buildings, and whether this building complies. Ms. Nann-Smith stated that upon research, the Brunswick Building Department has no property file for this location; that it was her understanding the building was constructed around 1960, which was after the adoption of zoning in the Town of Brunswick; that there is no certificate of occupancy on file for this building, and that she has never been inside the building. Member Clemente asked whether the requirement for Town inspections and issuance of a certificate of occupancy was an appropriate condition on a special use permit. Attorney Gilchrist stated that the Zoning Board has the jurisdiction to attach reasonable conditions to any special use permit, and that the building must otherwise comply with Town Code requirements. Mr. Cahill had a question regarding a certificate of occupancy, and whether the certificate of occupancy required compliance with the current New York State Building Code. Ms. Nann-Smith stated that her inspection would be based on the property maintenance code since the building was already existing. Member Shover asked Mr. Cahill whether there would be any inspections prior to the closing on his contract. Mr. Cahill stated that there would need to be inspections by the lender for financing, but that it was up to the lender as to the scope of the inspections it needs for financing. Member Clemente asked about the status of the siding on the left

side of this building, and what appears to be a hole in the side of the building. Mr. Cahill stated that the exterior of the front of the building appears to be in cedar, that the back was simply wrapped in Tyvek, and that he was not aware of the condition on the left side of the building. Mr. Cahill did state he has quotes to re-side the entire building if the closing occurs, and that he will look into the condition of the side of the building in the event the closing occurs. Chairman Steinbach asked whether Mr. Cahill has other properties that he owns and leases, and Mr. Cahill confirmed that he does own other rental properties. Chairman Steinbach confirmed with Mr. Cahill that he would not be living at this location, but rather that it was a business venture for rental income. Mr. Cahill stated that he would not be residing at this facility, but merely renting out the units. Chairman Steinbach stated that the Zoning Board needed to be mindful of the current tenants at this building, and that the building must meet Town Code requirements. Chairman Steinbach also felt that the Fire Department should inspect the building for safety purposes as well. Mr. Cahill had a question regarding which party is responsible if the building is not up to code. Attorney Gilchrist stated that this was a contract issue between the current owner and purchaser, but in general the owner of the property is required to maintain the building pursuant to code requirements. Chairman Steinbach stated that he wanted to see this building continue to be available to the tenants and for rental purposes, but that the building needed to comply with code requirements and that the tenants must be safe. Chairman Steinbach asked whether there were any further questions or comments from the Zoning Board. Hearing none, Chairman Steinbach made a motion to close the public hearing, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing on the Cahill special use permit application was closed. Chairman Steinbach stated that the Zoning Board is prepared to move forward and act on the special use permit application. Attorney Gilchrist stated that the first issue for the Zoning Board to address was making a determination of environmental significance under the State Environmental Quality Review Act. Attorney Gilchrist

reviewed the standards for environmental determinations under SEQRA. Member Schmidt stated that this was a situation where no new construction is being proposed, the building already exists and has been existing for several years, and that the improvements to the exterior of the building may actually improve environmental conditions, including visual impact. Member Schmidt then made a motion to adopt a negative declaration under SEQRA, finding that there are no potential significant adverse environmental impacts from the action. Member Clemente seconded the motion. The motion was unanimously approved, and a negative declaration adopted under SEQRA. Attorney Gilchrist then discussed with the Zoning Board Members the special use permit review standards. Chairman Steinbach stated that he felt this special use permit is in the overall public interest, as this building has been used for an 11-unit structure for several years, and this special use permit will require inspections for code compliance, that the existing parking was adequate, and that no additional traffic would result. Member Schmidt asked about the water supply, and whether there was only one well for water supply for this building. Mr. Cahill stated that there was one water supply well for this building, and has been adequate for water supply. Member Schmidt felt it was appropriate to have confirmation from the Rensselaer County Health Department that the water supply and septic system for this building is adequate. The Zoning Board Members generally discussed appropriate conditions for a special use permit in this case, which will include an inspection by the Brunswick Building Department for code compliance and determination on issuance of a certificate of occupancy; inspection by the Eagle Mills Fire Department for safety purposes; and confirmation from the Rensselaer County Health Department that the existing water supply and septic system is adequate for this use. Mr. Cahill had a question as to what code requirements would be applicable for the existing water and septic. Attorney Gilchrist stated that the requirements for the water supply and septic system is within the jurisdiction of the Rensselaer County Health Department, and that this condition does not specify any particular code applicability but rather

the requirement that the Rensselaer County Health Department confirm that the existing water supply and septic system are adequate for this building. Chairman Steinbach asked whether there were any further comments. Hearing none, Member Shover made a motion to grant the special use permit subject to the following conditions:

1. Inspection by the Brunswick Building Department for code compliance and determination on issuance of a certificate of occupancy;
2. Inspection by the Eagle Mills Fire Department; and
3. Confirmation from the Rensselaer County Health Department as to the adequacy of the existing water supply and septic system for this building.

Member Schmidt seconded the motion subject to the stated conditions. The motion was unanimously approved, and the special use permit granted subject to the stated conditions.

The next item of business on the Agenda was the area variance application submitted by David Kent for property located on Banker Avenue. This matter is held over to the September meeting.

The next item of business on the Agenda was the special use permit application submitted by Cellco Partnership d/b/a Verizon Wireless for the installation of a small cell antenna on the roof of the Stewart's building located at 2 Brick Church Road. The applicant was represented by Laura Bomyea, Esq. Ms. Bomyea stated that she had some additional elevations of the proposed cupola on the roof of the Stewart's building, which will house the small cell antenna. Chairman Steinbach asked whether there were any changes to the application. Ms. Bomyea stated that there were no changes to the application, and that the application is the same as presented at the July meeting, and that the elevations merely provided additional depiction of what the cupola would look like and where it would be located on the roof of the Stewart's building. Ms. Bomyea also confirmed that the escrow requirement for engineering review by the Zoning Board's retained engineer has been filed with the Town. Ms. Bomyea

generally reviewed the proposed cupola, which is designed to fit in architecturally with the new Stewart's building, including being the same color and design, with the goal of having the cupola appear part of the design of the building. The antenna is concealed inside of the cupola, so that there is not any apparent antenna on the roof of the building. Ms. Bomyea stated that the intent of this installation is to provide hot spot coverage, which is designed to provide additional coverage for approximately 1,000 feet around the antenna location, which will provide additional coverage for electronic devices like cell phones and tablets, which in turn opens up additional coverage from larger tower locations. Ms. Bomyea also reviewed the base enclosure/cabinet which will be located near the existing HVAC equipment at the rear of the Stewart's building. Member Trzcinski commented that the coverage for this antenna location does not include the Town baseball fields located on Route 2, and asked whether this installation could be increased in range to cover the Town's athletic fields. Ms. Bomyea directed the Zoning Board Members to Tab 9 of the special permit application, which provides a radio frequency analysis, and explained that the use of these small cell antenna is to pinpoint strategic areas which in turn allows additional coverage from the larger cell towers in the area, and in terms of this location, the cell tower located in the Callanan quarry would be able to provide additional coverage. Ms. Bomyea explains that it is similar to constructing additional roadways to free up traffic flow at a major intersection. Member Shover asked whether Verizon was constructing these small cell antenna at all Stewart's locations. Ms. Bomyea stated that she could not say whether this was being done at all Stewart's locations, but that Verizon does have a contract with Stewart's, and that her office had been involved with the installation at about a dozen Stewart's Shops, and they are generally well-received by the municipalities. Member Clemente asked whether these coverage areas for the small cell antenna are intended to overlap, or just redirect coverage from the existing larger cell towers. Ms. Bomyea stated that the small cell antenna are not designed to overlap, which may result in frequency interference, but are designed to redirect

coverage from the existing larger cell towers, and that these are strategically located in areas that have a high volume of use at existing cell towers. Ronald Laberge, P.E. of Laberge Engineering, engineering review consultants for the Zoning Board, was present, and went over his application review letter dated August 3. Mr. Laberge stated that he had reviewed the Verizon application with respect to the Town's telecommunications law, and found that the application was complete. Mr. Laberge stated that the supplemental reports to the special use permit application are acceptable, and that the application is complete for moving the Zoning Board review forward. Mr. Laberge did comment that this application must be referred to the Rensselaer County Department of Planning for review and recommendation. Chairman Steinbach asked Mr. Laberge to comment on Item 4(b) of his review letter, which addresses the structural stability of the roof to support the cupola plus the antenna. Mr. Laberge stated that the report on structural stability attached to the special use permit application was reviewed by his office, that the calculations are correct, and that the findings of the structural stability report are that no structural instability will result assuming the roof was constructed in accordance with the design plans. Zoning Board Members then determined the application was complete for scheduling the public hearing on this application. A public hearing is scheduled for the September 21 meeting to commence at 6:00 p.m.

Two items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Mark Hatfield for property located at 6 Petticoat Lane. The Zoning Board Members reviewed the application materials. Mark Hatfield was present, and generally reviewed the application with the Zoning Board Members. Mr. Hatfield stated that he and his wife purchased the home at 6 Petticoat Lane in 1996, and that there was an existing above-ground pool in the backyard. Several years ago, the pool was removed. There has been no pool in the yard for several years, but now the Hatfields wish to put in a pool in the

same location where the pool used to be located in the yard. Mr. Hatfield explained that locating a pool in the yard is limited, due to the location of the septic system as well as a very large maple tree located on the neighbor's lot. Mr. Hatfield did state that the backyard is completely fenced in. Chairman Steinbach confirmed that Mr. Hatfield had removed the pool, and that there had been no pool in the yard for a period of several years. Mr. Hatfield stated that was accurate. Member Clemente asked about the pool size, with the application noting it was a 12 ft. by 20 ft. pool. Mr. Hatfield stated that the pool is proposed for 12 ft. by 20 ft., and that it fits better in the yard with that configuration rather than a round pool. Chairman Steinbach also noted that the application provides that the rear yard setback requirement under the Town Code is 20 ft., but the application requests between 10 to 12 ft.; and that the right side setback required under the Town Code is 15 ft., but the application requests between 12 to 14 ft. Mr. Steinbach asked why the proposed location was not definite. Mr. Hatfield stated that the pool will require some excavation, and that he did not know if excavating would require a slight adjustment in final location due to soil conditions or rock. The Zoning Board Members generally concurred that the application was complete and ready for public hearing. The Zoning Board set the public hearing for this application for its September 21 meeting to commence at 6:15 p.m.

The second item of new business discussed was an area variance application submitted by Carmine Battuello for property located at 198 North Lake Avenue. The Zoning Board Members generally reviewed the application materials. Carmine Battuello was present, and generally reviewed the application with the Zoning Board Members. Mr. Battuello explained that he was looking to construct an attached enclosure on the left side of his house, to be used for storage which would allow him to clean up the property and store materials in an enclosed structure. Chairman Steinbach noted that the proposed addition was substantial, measuring approximately 13 ft. by 38 ft., and would be located only 4 ft. from the side yard line. Member Trzcinski stated that the application materials do not

include a drawing showing the entire lot, with the existing house location, and the proposed location for the enclosure. Member Schmidt stated he wanted a map showing the house location, proposed location of the new addition, water, sewer, power lines and also lot lines and adjacent properties. Member Shover stated that the Zoning Board does need a plot plan, particularly since this enclosure is proposed to be constructed on concrete slab and will be permanent. Mr. Battuello stated that he could immediately provide that plot plan, and that he had already spoken with the neighbor adjacent to the proposed addition, and that the neighbor does not have any objection. The Zoning Board Members generally found the application to be complete other than the submission of the plot plan, and generally understood the layout of the lot as well as the proposed addition. The Zoning Board Members determined to schedule the public hearing for this application at its September 21, meeting to commence at 6:30, with the provision that Mr. Battuello submit the plot plan no later than September 9 so that the Zoning Board Members have adequate time to review it and make a site visit prior to the September 21 meeting, and that the plot plan is on file with the Town when the public hearing is noticed.

The index for the August 17, 2015 meeting is as follows:

1. Cahill – Special Use Permit – Approved with conditions.
2. Kent – Area Variance – September 21, 2015.
3. Cellco Partnership d/b/a Verizon Wireless – Special Use Permit – September 21, 2015 (Public Hearing to commence at 6:00 p.m.).
4. Hatfield – Area Variance – September 21, 2015 (Public Hearing to commence at 6:15 p.m.).
5. Battuello – Area Variance – September 21, 2015 (Public Hearing to commence at 6:30 p.m.).

The proposed Agenda for the September 21, 2015 meeting currently is as follows:

1. Cellco Partnership d/b/a Verizon Wireless – Special Use Permit (Public Hearing to commence at 6:00 p.m.).
2. Hatfield – Area Variance (Public Hearing to commence at 6:15 p.m.).
3. Battuello – Area Variance (Public Hearing to commence at 6:30 p.m.).
4. Kent – Area Variance.