

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD SEPTEMBER 21, 2015

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

Absent was CHAIRMAN MARTIN STEINBACH.

ALSO PRESENT was MICHAEL CZORNYJ, Brunswick Building Department.

Member Clemente served as acting Chair for this meeting.

Member Clemente reviewed the meeting agenda, noting that the application by Kent for area variance is adjourned without date at the request of the applicant. Attorney Gilchrist noted for the record that the applicant's attorney had submitted to Attorney Gilchrist a title opinion concerning the acquisition of fee title interest by Mr. Kent in property connecting his lot to frontage directly on the improved Banker Avenue. Attorney Gilchrist stated he would review that title opinion.

The draft Minutes of the August 17, 2015 meeting were reviewed. Upon motion of Member Trzcinski, seconded by Member Schmidt, the draft Minutes of the August 17, 2015 meeting were unanimously approved without amendment.

The first item of business on the agenda was the special permit application submitted by Cellco Partnership dba Verizon Wireless for property located at 2 Brick Church Road. The applicant seeks installation of a small cell antenna on the roof of the existing Stewart's building located at 2 Brick Church Road. Laura Bomyea, Esq., attorney representing the applicant, was

present. Also present was Gabrielle Ellsbury of Pyramid Network Solutions, on behalf of the applicant. The Zoning Board opened the public hearing on this application. The Notice of Public Hearing was read into the record, with the notice having been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of properties located within 500 feet of the project site. Member Clemente inquired whether there were any changes to the application. Ms. Bomyea stated that there were no changes to the application. Ms. Bomyea did present to the Zoning Board an additional photo simulation of the proposed cupola on another structure, with the explanation that the cupola would be located slightly different on the roof of the Stewart's at 2 Brick Church Road, but the photo simulation did present a visual of the cupola on an existing structure. Ms. Bomyea also noted that the recommendation had been received from the Rensselaer County Department of Economic Development and Planning, noting that the application did not conflict with County plans and that local consideration shall prevail. Ms. Bomyea also stated that, in response to the question from Member Trzcinski, Verizon did research whether cell coverage and 911 coverage were provided at the Route 2 athletic fields, and confirmed that both Verizon service and 911 coverage is provided at the Route 2 athletic fields. Member Clemente asked whether any of the members of the Zoning Board had questions for the applicant. No member of the Zoning Board had any further questions. Member Clemente then opened the floor for receipt of public comment. No members of the public wished to provide any comment on the application. Mr. Czornyj also stated that there had been no written comments received from the public, but did note for the record that he had received some inquiry regarding the visibility of the antenna, but when it was explained that the antenna was housed within a cupola, there were no further questions or inquiries from the public. Hearing no public comments, the Zoning Board closed the public hearing on this special permit application. The Zoning Board

members then proceeded to deliberate on the application. Member Trzcinski had a question concerning the schedule for installation of the antenna and cupola in the event the special permit was granted. Ms. Bomyea stated that the applicant still needed to have a site plan reviewed by the Planning Board, but in the event the site plan is approved, Verizon Wireless is intent on installing this facility before winter. Mr. Czornyj noted for the record that Ms. Bomyea had presented the concept site plan to the Brunswick Planning Board at its September 17 meeting. Also in attendance at the meeting was Ronald Laberge, P.E., the engineering review consultant to the Zoning Board on this application. Mr. Laberge again reviewed his comment letter dated August 3, stating that the application was complete pursuant to Section 5(A) of the Town of Brunswick Telecommunications Law, and that there are no outstanding engineering or technical issues on the application. Mr. Laberge did note that the recommendation of the Rensselaer County Planning Department had been completed and received by the Town. The Zoning Board members then determined that the application materials are complete, the public hearing has been closed, and the Board is prepared to deliberate and act on the application. Member Clemente stated that compliance with SEQRA must be first addressed. Attorney Gilchrist stated that the standard for the Board to consider under SEQRA is whether, based on the application documents and other materials received, the action has the potential to create an adverse significant environmental impact, in which case a positive declaration would be adopted and the preparation of an environmental impact statement required, or whether there was not the potential for any significant adverse environmental impact from the action, in which case a negative declaration would be adopted and the SEQRA process concluded. The Zoning Board members deliberated, and determined that there were not any significant adverse environmental impacts resulting from the action. Member Trzcinski then made a motion to adopt the negative declaration, which motion

was seconded by member Shover. The motion was unanimously approved, and a SEQRA negative declaration adopted. Attorney Gilchrist then stated that under the Town's Telecommunications Law, at section 5(B) pertaining to minor personal wireless telecommunication service facilities, if a complete and satisfactory application pursuant to the provisions of Section 5(A) of the Town's Telecommunications Law has been provided, and if the proposed modifications to the existing building is deemed insignificant, and after the Zoning Board has conducted a public hearing and complies with SEQRA, the law directs that the Board shall grant the special use permit without further review under the Town's Telecommunications Law. The Zoning Board members determined that the application was complete and satisfactory pursuant to the Town's Telecommunications Law Section 5(A), and specifically relied on the review memorandum of Laberge Engineering, and also determined that the proposed modification consisting of the cupola on the top of the existing Stewarts building was not significant, and considering that the Board has conducted the public hearing and adopted a SEQRA negative declaration, the Board was of the opinion that the special use permit should be granted without further review under the Town's Telecommunications Law standards. Member Schmidt then made a motion to grant the special use permit, which motion was seconded by Member Shover. The motion was unanimously approved, and a special use permit granted to Cellco Partnership dba Verizon Wireless in this matter.

The next item of business on the agenda was the area variance application submitted by Mark Hatfield for property located at 6 Petticoat Lane. Mark Hatfield was present. 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's sign board, posted on the Town website, and mailed to owners of properties within 500 feet of the

project site. Member Clemente asked whether there were any changes to the application. Mr. Hatfield stated there were no changes to the application, and gave a brief overview of the variance request. Mr. Hatfield stated that he was seeking to re-install a pool in his backyard in a location where a pool had previously been situated for several years. The pool previously was an above ground pool, and he was now looking to install a below-grade pool. The backyard measures approximately 55 feet by 65 feet, but pool location is limited by an existing septic system and mature trees. Mr. Hatfield explained that he was looking to position the pool in the general location where it had previously been located, which will be approximately 10-12 feet from the rear yard property line. The Town Code requires a rear yard setback of 20 feet. Mr. Hatfield also stated that the pool would be located approximately 12-14 feet from the side yard line. The Town Code requires a side yard setback of 15 feet. Mr. Hatfield handed up to the Zoning Board a letter from David Shields, residing at 8 Petticoat Lane, stating that he has no objection to the granting of these two variances. Mary Grace Bulson also resides at 8 Petticoat Lane, and also has no objection to the granting of the variances. The Zoning Board then opened the floor for receipt of public comment. There were no members of the public seeking to comment on the application. Member Clemente asked whether any members of the Zoning Board had any questions. No member of the Zoning Board had any further questions. Member Schmidt did state that he felt the proposed location of the pool was the most logical place in the backyard, given the constraints of the septic system location and mature trees. Member Clemente concurred in that opinion. Thereupon, the Zoning Board closed the public hearing on the Hatfield area variance application. The Zoning Board members then proceeded to deliberate on the application. Attorney Gilchrist stated that the application seeks an area variance for a residential use, 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 elements for the area variance. As to whether the requested variances would result in an undesirable change in the character of the neighborhood, or create a detriment to nearby properties, the Zoning Board members generally concurred that this will not result in an undesirable change or impact on adjacent properties, as the backyard was already fenced, the pool would generally be out of sight, and that there were other pools in the yards in this neighborhood. The Zoning Board members also found that there was not a feasible alternative to the applicant for the pool location on this lot, given the constraints of the lot in terms of the location of the septic system, house, driveway, patio, and mature trees. The Zoning Board members did feel that the requested variance from the rear yard setback requirements could be deemed substantial, but given the specific facts of this application and constraints of the lot, felt that this factor was relevant but not controlling. The Zoning Board members felt that the requested variance from the side yard setback was not substantial. The Zoning Board members also felt that the variances would not result in any negative impact on the environment or physical characteristics of the location. On the element of whether the difficulty in requiring the variances is self- created, the Zoning Board did take into account that a pool had been in this location for several years, and that the request is to replace the pool in the approximate same location; the Zoning Board also took into account the lot constraints, including the location of the existing septic system, as well as mature trees. The Zoning Board members determined that even if the hardship is determined to be self-created, this was a relevant consideration, but not controlling on this specific application. Attorney Gilchrist then stated that the Board should consider these elements in its deliberations to determine whether to grant, grant with any conditions, or deny the variance, and, in doing so, balance the benefit to the applicant in granting the variances as against any detriment created to the public. Based on the deliberations of the Zoning Board, Member Trzcinski

made a motion to grant both the rear lot line variance and side lot line variance, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variances granted on the Hatfield application.

The next item of business on the agenda was the area variance application submitted by Carmine Battuello for property located at 198 North Lake Avenue. Carmine Battuello was in attendance. The Zoning Board opened a public hearing on this application. The Notice of Public Hearing was read into the record, with that notice having been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of property located within 500 feet of the project site. Member Clemente asked whether there were any changes to the application. Mr. Battuello stated there were no changes to the application, and presented a brief overview of the project. Mr. Battuello stated that he was proposing to construct an addition to the left side of the existing residential dwelling for use as a storage area. The new addition would be located approximately four feet from the side yard line. The Town code requires a ten foot side yard setback. Mr. Battuello stated that the proposed storage area would be approximately 13 feet wide, and 38 feet deep, and attached to the existing house. Member Clemente noted that the Zoning Board members had just received additional photographs concerning the proposed addition at this evening's meeting. Mr. Battuello stated that he had supplied this additional information at the request of the Zoning Board members only a few days after the August meeting. Member Shover stated that he did not yet see a completed plot plan showing the entire lot and location of existing structures, but did acknowledge that there were drawings, as well as the photographs. The Zoning Board members confirmed that the additional drawing and photographs were submitted by Mr. Battuello to the Building Department in August, but that the Zoning Board members had not been provided copies of those until the September 21 meeting. The Zoning

Board then opened the floor for receipt of public comments. Mr. Battuello stated that he had provided a letter from the adjacent property owner that is closest to the proposed addition to his house, Hugh Leonardo, 200 North Lake Avenue, and that Mr. Leonardo states he has no objection to the granting of the area variance for the construction of this addition to the Battuello house. Richard Surprenant, 197 North Lake Avenue, stated that he was the owner of the property located across the street from the Battuello house, and just had some questions regarding the proposed addition, including whether the appearance was going to be as a finished garage with siding and roof shingles; Mr. Battuello stated that the addition would be sided to be uniform with his house and would have roof shingles. Mr. Surprenant also asked about the size of the addition, and noted he had heard the addition would be 13 feet wide by 38 feet deep; that Mr. Surprenant had concern that the addition to the house would be consistent with the character of the area. Mr. Battuello stated that the addition would be consistent with the look of his house, that he would side the addition to be consistent with the siding on the rest of his house, and that the addition would be of the same character of the surrounding neighborhood. Mr. Battuello also stated that the addition was just for storage, and that he had no plans to use it for any car or trailer storage. There were no other public comments submitted. Member Trzcinski asked whether the roof to the addition would be pitched or simply be a flat roof. Mr. Battuello stated that the roof would be pitched on one side, leading away from the side of the house. Member Trzcinski also asked what the front of the addition would look like. Mr. Battuello stated that he was looking to have a garage door installed in the front of the addition, and that there would likely be windows installed on the side of the addition. Member Shover then commented that this would look like a garage, and not simply an addition to the house. Mr. Battuello stated that the addition would look like a garage, but it was being used for storage of household items only, and would not be used to store cars or trailers.

Member Shover was concerned about the exact location of the property line. Mr. Battuello stated that his neighbor had a survey performed when he installed his fence, and that he does know the location of the property line, and knows that the addition will be approximately four feet off of the property line. Member Shover asked whether the addition would be flush with the front of the existing house. Mr. Battuello said that the addition would be flush with the front of the existing house to create a consistent look. Member Clemente noted that there was an existing exterior door on the side of the house, and asked whether that would be maintained to gain interior access to the addition, as well. Mr. Battuello said the side door would be maintained. The Zoning Board members then had extended discussion regarding the need for a formal plot plan on this application in light of the drawing and photograph material submitted by Mr. Battuello to the Building Department. The Zoning Board members also discussed whether to close the public hearing. Attorney Gilchrist stated that in the event the Zoning Board closed the public hearing, the Zoning Board did have up to 62 days in which to render a decision, which would allow the Zoning Board members opportunity to take a further look at the application materials and to visit the site again, if necessary. Attorney Gilchrist stated that the Zoning Board must determine that it has adequate information on which to base its decision. Following further deliberation, the Zoning Board determined to close the public hearing. Member Trzcinski 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 Battuello area variance application was closed. Member Shover stated that it was significant that the adjoining property owner closest to this proposed addition had submitted a letter saying that he had no objection to the variances. Attorney Gilchrist then stated that while the letter from the adjacent neighbor was relevant, the Zoning Board members still needed to determine that it had adequate information in the application if it proceeded to

deliberate and act on the application. Following further discussion, the Zoning Board members determined that the application was complete and adequate for action. Attorney Gilchrist then noted that this application seeks an area variance for a residential use, and constitutes a Type 2 action under SEQRA. The Zoning Board members then proceeded to deliberate on the elements for the area variance. As to whether the requested variance would result in an undesirable change in the character of the neighborhood or create a detriment to the neighborhood, the Zoning Board members generally stated that the proposed addition was consistent with the neighborhood character, that it would have the same siding and appearance as the remainder of the house, and would be consistent with the neighborhood. The Zoning Board members also took into account the letter from the adjacent property owner, as well as the comments of the property owner on the other side of North Lake Avenue. Member Schmidt also stated that there was no feasible alternative to locating the proposed addition on the lot. The Zoning Board members generally concurred that the variance would not result in any detrimental effect on the physical or environmental conditions in the neighborhood. The Zoning Board members did feel that the variance was substantial and was self-created, but felt that these are factors to be considered and are not determinative on this application. The Zoning Board members then further deliberated on these elements, and weighed the benefit to the applicant in granting of the variance as against any detriment to the public. Following this deliberation, Member Trzcinski made a motion to grant the area variance subject to the condition that the Building Department require a plot plan showing the specific location of the lot line at the time of applying for a building permit. That motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance granted, subject to the stated condition.

Two items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Rick Relyea, 229 Creek Road. Mr. Relyea was in attendance. Mr. Relyea explained that he owned 38 acres at 229 Creek Road, which are predominantly forested, with a two-acre developed area on which he has his house and existing garage. The existing garage is a three door, 1.5-story building that is deteriorating. Mr. Relyea stated that he is looking to replace the existing garage with a four-door, two-story structure in the same general location, which will be next to his existing house, which is three stories. Mr. Relyea stated that the garage will be located approximately 400 feet from the property line, and is not visible from the road or any neighboring properties. Mr. Relyea stated that the new garage would be placed in the same general location, but will be about ten feet wider given the addition of another bay. Mr. Relyea stated that with a two-story garage, a height variance is required. Member Trzcinski confirmed that the Zoning Board members will have access to the property, and will be allowed to drive in on the private driveway up to the area of the house and garage on the property. Mr. Relyea stated that the Zoning Board members are welcome. The Zoning Board members then generally reviewed the application materials, and found them to be complete to move this matter forward to public hearing. A public hearing on this matter is scheduled for the October 19 meeting, to commence at 6:00 p.m.

The next item of new business on the agenda was a concept presentation by Price Chopper for renovation of the Price Chopper store located in the Brunswick Plaza. Chuck Chisholm, Director of Property for Price Chopper, presented the concept plan, where Price Chopper seeks to remodel the exterior of the front of the Price Chopper in the Brunswick Plaza, in conjunction with significant interior renovations. The proposal is to remodel the Brunswick Store to a “Market 32” brand, rather than the existing Price Chopper façade. In connection with this exterior renovation, a “Market 32” sign, as well as several picture panels, will be added to the exterior of the building,

plus additional signage for the pharmacy, a Starbucks, as well as a “Welcome” sign over the entrance door. Mr. Chisholm stated that Price Chopper had renovated existing stores to the “Market 32” brand in Clifton Park, Wilton, and in Pittsfield. Mr. Chisholm stated that Price Chopper was seeking to start this renovation by the end of 2015. Member Trzcinski wanted to confirm that this was an exterior renovation only, and that there were no changes to the footprint or expansion of the structure. Mr. Chisholm stated that there were only interior renovation and exterior renovation on the existing building being proposed, with no structural additions or changes. The representatives of Price Chopper characterized the picture panels as “graphic panels,” that would be illuminated. There was discussion concerning the total number of signs, as well as the size of the signs. The Price Chopper representative stated that the existing signs at the Price Chopper store totaled 281 square feet, and that the proposed “Market 32” sign, the Starbucks sign, the pharmacy sign, and the “Welcome” sign total 229 square feet, whereas the “graphic panels” total an additional 395 square feet. Member Trzcinski had questions regarding the illumination of the “graphic panels.” The Price Chopper representative stated that they are illuminated, but are not very bright, and stated there are examples of these in both Clifton Park and Wilton. There was extended discussion regarding the requirements of the Town sign law. Attorney Gilchrist stated that he had been contacted by the Brunswick Building Department, and had looked at the proposal in relation to the Town sign law, and specifically the definition of “sign” under the Brunswick Town Code, and assisted the Building Department in its determination that the illuminated “graphic panels” constitute signs under the Brunswick Town Code. Attorney Gilchrist made it clear that the applicant had several options available to it, including an appeal of that determination by the Brunswick Building Department as to whether the “graphic panels” constitute signs under the Brunswick Sign Code, which could be entertained by the Brunswick

Zoning Board of Appeals. In the event the applicant seeks to appeal the determination of the Brunswick Building Department, then Attorney Gilchrist would recuse himself from advising the Zoning Board on that issue, as he participated in the determination of the Brunswick Building Department in the first instance. In that regard, in the event an appeal is taken by the applicant, then the Zoning Board will retain separate counsel. Alternatively, Attorney Gilchrist stated that the applicant could simply work with the Building Department on the issue of total number of signs and total square footage of signs allowed under the Brunswick Town Code, and if a variance is required from those restrictions, then a variance application could be made directly to the Zoning Board of Appeals. There was general discussion concerning these options, with the applicant stating that it would review its options and work with the Brunswick Building Department as to how to proceed. This matter is adjourned without date.

The index for the September 21, 2015 meeting is as follows:

1. Cellco Partnership dba Verizon Wireless – special use permit – granted.
2. Hatfield – area variances – granted.
3. Battuello – area variance – granted subject to condition.
4. Relyea – height variance – 10/19/2015 (public hearing to commence at 6:00 p.m.)
5. Price Chopper – concept presentation – adjourned without date pending receipt of application.

The proposed agenda for the October 19, 2015 meeting currently is as follows:

1. Relyea – height variance (public hearing to commence at 6:00 p.m.)